

TRANSCRIPT OF RECORD

Supreme Court of the United States
OCTOBER TERM, 1962

No. 146

THE COLORADO ANTI-DISCRIMINATION
COMMISSION ET AL., PETITIONERS,

vs.

CONTINENTAL AIR LINES, INC.

No. 492

MARLON D. GREEN, PETITIONER,

vs.

CONTINENTAL AIR LINES, INC.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF COLORADO

NO. 492 PETITION FOR CERTIORARI FILED APRIL 30, 1962
CERTIORARI GRANTED OCTOBER 8, 1962

SUPREME COURT OF THE UNITED STATES

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**BEFORE THE
COLORADO ANTI-DISCRIMINATION COMMISSION**

655 Broadway
Denver 3, Colorado
No. 25

MARLON D. GREEN, Complainant,

vs.

CONTINENTAL AIRLINES, INC., Respondent.

COMPLAINT

For complaint against the Respondent above named, Complainant alleges:

1. That Respondent, Continental Airlines, Inc., a private employer, whose address is Stapleton Airfield, Denver, Colorado, and who is engaged in the business of operating a commercial airline, has violated the Colorado Anti-Discrimination Act of 1957 in the following respects:

2. That on or about July 8, 1957, Respondent refused to employ Complainant as a commercial airline pilot because he is a Negro.

3. That Respondent failed to advise Complainant as to the action taken on his application for employment within the ten-day period of time between June 26, 1957, the completion date of interviews and flight tests, and July 5, 1957, as promised.

4. That Respondent's Application for Employment form contains at least two specifications prohibited by the Colorado Anti-Discrimination Act of 1957, viz., attachment of photograph and applicant's race.

Wherefore, the Complainant requests the Colorado Anti-Discrimination Commission to use whatever powers are at

its command to eliminate the foregoing alleged discriminatory or unfair employment practices; and for such other and further relief as may be within the Commission's jurisdiction.

Complainant's address: 913 Nipp Street, Lansing, Michigan.

Marlon D. Green, Complainant.

Subscribed and sworn to before me this 13th day of Aug. 1957, by Marlon D. Green.

My Commission expires March 8, 1958.

H. Marie Brower, Notary Public, Ingham County,
Mich. My Commission Expires March 8, 1958.

[fol. 166]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

Complaint No. 25

In the Matter of MARLON D. GREEN, Complainant,

vs.

CONTINENTAL AIR LINES, INC., Respondent.

ORDER—March 28, 1958

Whereas, The Coordinator of the Colorado Anti-Discrimination Commission, as the investigating official for said Commission, has determined that probable cause exists for crediting the allegations of said Complaint, a verified copy of which is attached hereto,

Whereas, The Colorado Anti-Discrimination Commission heretofore has directed the Coordinator of Fair Employment Practices to take steps to eliminate the discriminatory and unfair employment practices therein complained of by methods of conference, conciliation and persuasion, and,

Whereas, The Coordinator of Fair Employment Practices has endeavored to conclude said Complaint by informal methods of conference, conciliation and persuasion, and,

Whereas, The Coordinator, as the investigating official, has determined in his opinion that the circumstances did not warrant the issuance and service of a written notice requiring the Respondent to answer the charges of such Complaint in writing within ten days after the date of such notice under the provisions of Section 6 (5) of Chapter 176, CSL 1957, and,

Whereas, The Coordinator of Fair Employment Practices heretofore has reported to the Colorado Anti-Discrimination Commission that further endeavors at conference, conciliation and persuasion would prove futile.

Therefore, The Colorado Anti-Discrimination Commission finds that said Complaint should be docketed for hearing before the Commission sitting as Hearing Examiners.

It Is, Therefore, Ordered: That a hearing thereon be had before said Hearing Examiners at the office of the Commission, 655 Broadway Building, Suite 910, Denver, Colorado, on the 23rd day of April, A. D. 1958 at the hour of Ten a.m., pursuant to the provisions of Chapter 176, CSL 1957, and that said Respondent shall answer the charges of the Complaint either in person, with or without counsel, or by the filing of a written verified answer to the Complaint, and, that in the event of the failure of the Respondent to answer the Complaint at the hearing, the Commission may enter the default of the Respondent.

In Witness Whereof, The Colorado Anti-Discrimination Commission has caused these presents to be duly executed this 28th day of March, A. D. 1958.

Colorado Anti-Discrimination Commission, Edward Miller, Chairman, Mrs. Paul Budin, George Oliver Cory, Robert C. Keeler, Gene Manzanares, George J. White, Commissioners, By: Roy M. Chapman, Coordinator of Fair Employment Practices.

[fol. 172]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

No. 25

[Title omitted]

ANSWER

Comes Now the above named Respondent and for its answer to the complaint herein states and shows the Commission as follows:

First Defense

1. Admits that it is a duly authorized and certificated commercial carrier by air and that it maintains an office at Stapleton Airfield, Denver, Colorado; denies that it has violated the Colorado Anti-Discrimination Act of 1957 as alleged in paragraph 1 of the complaint.

2. Denies the allegations of paragraphs 2 and 3 of the complaint.

3. Admits that its application for employment form provides a space for the attachment of a photograph of the applicant, as alleged in paragraph 4 of the complaint, but denies that the same is prohibited by the Colorado Anti-Discrimination Act of 1957.

4. Admits that its application for employment form formerly contained a space in which the applicant's race was to be indicated, as alleged in paragraph 4 of the complaint, [fol. 173] but states that its application for employment form presently in use does not and has not for many years contained a space for such information.

Second Defense

1. More specifically answering the allegation in paragraph 4 of the complaint that the provision in its application for employment form for the attachment of a photograph is prohibited by the Colorado Anti-Discrimination Act of 1957, Respondent alleges that such provision is

neither intended to nor does in fact express any limitation, specification, or discrimination as to race, creed, color, national origin or ancestry but, on the contrary, is and has been used by Respondent for many years and is based upon a bona fide occupational qualification in that:

(a) Respondent's business involves the providing of services to the public; its employees are in frequent and close personal contact with its passengers; the physical appearance and attractiveness of its employees are important factors in the promotion and development of its sales, the confidence and attitude of its passengers, and the conduct of its business in competition with other commercial carriers by air;

(b) Respondent can and does employ in its flight operations only persons whose physical appearance and characteristics are attractive and pleasing and who are without physical disfiguration;

(c) Respondent expends substantial amounts of time and money transporting and interviewing applicants for employment and only by requesting a photograph of the applicant to be attached to its application form can Respondent avoid the time and expense, both to it and the applicant, of transporting and interviewing persons whose [fol. 174] physical appearance or characteristics alone would disqualify them for the position to be filled;

(d) The practice of requiring applicants for employment to submit photographs with their application form is customarily used and accepted, both by commercial carriers by air and businesses generally, and if Respondent is prohibited from following such customary usage and practice, it will be penalized and placed at a disadvantage as compared with other commercial carriers by air and businesses generally.

2. If the Colorado Anti-Discrimination Act of 1957 prohibits Respondent from requiring applicants for employment to submit a photograph with their application form, said Act, or such portions thereof as purport to authorize the prohibition complained of, deny to Respondent the equal protection of the laws and deprive it of its property with-

out due process of law in violation of Article XIV, Section 1 of the Constitution of the United States and of Article II, Section 25 of the Constitution of the State of Colorado, and by reason thereof are unconstitutional and void.

Third Defense

1. Respondent is engaged in the interstate transportation of passengers and freight by air by virtue of and subject to the laws, statutes and regulations of the United States applicable to interstate commercial carriers by air, including the Civil Aeronautics Act of 1938, as amended (49 U.S.C.A. §§401 et seq.) and the Railway Labor Act, as amended (45 U.S.C.A. §§151 et seq.).

2. By such laws, statutes and regulations the United States has pre-empted and reserved to its exclusive jurisdiction the regulation and control of interstate commercial [fol. 175] carriers by air pursuant to the provisions of Article I, Section 8 of the Constitution of the United States.

3. The provisions of the Colorado Anti-Discrimination Act of 1957, purporting to regulate and control Respondent in its operations as an interstate commercial carrier by air, are and constitute an undue burden on interstate commerce in violation of Article I, Section 8 of the Constitution of the United States.

4. By reason thereof, the said Act is unconstitutional and void insofar as it purports to regulate and control Respondent's operations as an interstate commercial carrier by air.

Fourth Defense

Respondent moves the Commission for an order dismissing the complaint for lack of jurisdiction over the subject matter of this proceeding.

Wherefore, Respondent, having fully answered the complaint herein, prays that the same be dismissed.

Holland & Hart, By Patrick M. Westfeldt, William C. McClearn, Attorneys for Respondent, 520 Equitable Building, Denver 2, Colorado, AMherst 6-1461.

Address of Respondent: Stapleton Airfield, Denver, Colorado.

State of Colorado,
City and County of Denver, ss.

Harrold W. Bell, Jr., being first duly sworn, states that he is a Vice President of Continental Air Lines, Inc.; that he makes this verification for and on behalf of Continental Air Lines, Inc.; that he has read the foregoing Answer and knows that the contents thereof are true and correct.

Harrold W. Bell, Jr.

Subscribed and sworn to before me this 7th day of May, 1958.

Zaida Hogan, Notary Public.

My commission expires July 30, 1959.

[fol. 176]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

[Title omitted]

Transcript of Hearing—May 7 and 8, 1958

Pursuant to Notice to All Parties in Interest, the above-entitled matter came on for hearing before the Colorado Anti-Discrimination Committee, 655 Broadway Building, Denver, Colorado, on Wednesday, May 7, 1958.

Before: Edward Miller, Chairman, Mrs. Paul Budin, Commissioner, Robert Keeler, Commissioner, Gene Manza-
nares, Commissioner, George J. White, Commissioner.

APPEARANCES:

Wendell P. Sayers, Esq., Assistant Attorney General, appearing on behalf of the Complainant.

Patrick M. Westfeldt, Esq., and William C. McClearn, Esq., appearing on behalf of the Respondent.

[fol. 179]

PROCEEDING

COLLOQUY

Chairman Miller: Are the parties ready in the case of Marlon Green against Continental Air Lines?

Mr. Westfeldt: Yes, they are.

Mr. Sayers: The Complainant is ready.

Chairman Miller: The record should show the Complainant is represented by Wendell Sayers and the Respondent Continental Air Lines by—

Mr. Westfeldt: Patrick M. Westfeldt and William C. McClearn of Holland and Hart.

Chairman Miller: And the Commissioners present, Edward Miller, Chairman, Mr. White, Mr. Keeler, Mr. Manzanares and Mrs. Budin. The only one absent is Mr. Cory.

This matter comes up at this time on the complaint of Marlon D. Green, Complainant, against Continental Air Lines, Inc. The Complainant alleges:

CLERK'S NOTE

This complaint is the same as the complaint which appears at pages 1 and 2 of the record. It is accordingly omitted from the printed record at this point.

[fol. 180] May I ask, is this answer being submitted at this time?

Mr. Westfeldt: Yes, Mr. Chairman, it is.

Chairman Miller: The Answer of the Respondent sets forth as follows:

CLERK'S NOTE

This answer is the same as the answer which appears at pages 4-6 of the record. It is accordingly omitted from the printed record at this point.

[fol. 184] In other words, under the First Defense there are denials of the material allegations of the Complaint, the Second Defense relates to the questions of the validity of the requirement of the Act or the prohibition of the use of photographs in the application, the Third Defense relates to the jurisdiction of the Commission, as I understand it, and the Fourth is also a motion for lack of jurisdiction which I presume is based on the matters set up in the Third Defense, or are there other matters included in the Fourth Defense?

[fol. 185] Mr. Westfeldt: It is based on the matters set up in the Third Defense.

Chairman Miller: You raise constitutional questions. I assume that the Commission would have to proceed on the basis, first, that it has jurisdiction. I mean the question of jurisdiction would be fully argued later, but so far as this hearing is concerned, it would have jurisdiction to hear the allegations of the complaint and then in considering the whole matter, consider also the matter of the constitutionality of the Act, of the whole Act.

Mr. Westfeldt: Mr. Chairman, I think my position with respect to that is this, and actually Mr. McClearn and I would like to divide up our roles in this hearing and I would like to make to this Commission a statement of the position of Continental Air Lines on the subject of the constitutionality of the Act insofar as it purports to regulate an interstate carrier by air, and the jurisdiction of this Commission. I think as a matter of possible judicial review of the proceedings before this Commission these things must be asserted at this hearing.

Chairman Miller: I think it is quite proper.

Mr. Westfeldt: And I would like to ask leave, if I may, to go into the question of the constitutionality and jurisdiction of the Commission. I just as soon do it right now or at the end of the hearing.

Chairman Miller: How long do you think it would take [fol. 186] to cover the question of jurisdiction?

Mr. Westfeldt: Fifteen minutes.

Chairman Miller: Why don't you do it now? Is that agreeable? And as I understand it, Mr. McClearn, you are to cover the questions of fact?

Mr. McClearn: That is correct.

STATEMENT IN BEHALF OF RESPONDENT

Mr. Westfeldt: First of all, I would like to point out that the answer on file is a verified answer and I think it is clear from both of the pleadings on file in this case that the Respondent, Continental Air Lines, is an interstate carrier by air operating through many States in the United States, and as asserted in the Answer under Article I, Section 8 of the United States Constitution, the Congress of the United States has given the power to regulate interstate commerce and this power is supreme.

Now, it is supreme in relation to State laws that purport to regulate interstate commerce or actions in interstate commerce. With respect to interstate carriers by air, Congress has legislated very broadly and the two principal statutes of the United States that regulate interstate carriers by air are the Civil Aeronautics Act of 1938 and the Railway Labor Act, which was originally enacted only to cover railroads but by the 1938 amendment was extended to cover airlines, and because of the provisions of these two Acts we think an attempted extension of the Colorado [fol. 187] Anti-Discrimination Act to air carriers in interstate commerce is not constitutional and that Congressional legislation has completely occupied the field in this regard, and I think that these Acts have also occupied the field with respect to the matters of racial discrimination such as alleged in the Complaint.

Now, of course, it is the position of the Respondent, as set forth in the Complaint, that there wasn't any violation of the Colorado Act in any event, but I do think that it is important for the Commission to understand the argument of the Respondent, and that is that under the circumstances of the existing legislation the Colorado statute cannot be extended to interstate air carriers.

Now, first of all, the Railway Labor Act, which is in 45 U.S. Code 151 and many following sections. This is a very broad and comprehensive Act prescribing, among other things, the duties of carriers by air with respect to employees, and I will certainly admit that the Railway Labor Act does not contain a specific and detailed Fair Employment Practices Act such as is set forth in the Colorado statute under which this case is brought. But I would also like to point out that that Act doesn't contain any specific detailed provisions, for example, requiring labor unions to fully and fairly represent members of minority groups, and yet by judicial decisions the United States Supreme Court in two leading cases has said that under the Railway Labor Act there is a statutory duty, for example, on [fol. 188] labor unions not to discriminate for reasons of race, creed or color, and things of that nature. So that I think by the judicial decisions of the United States Supreme Court it is clear that the subject of racial discrimina-

tion at least applied to labor unions and it should be applied to employers on the same basis. The Railway Labor Act has been extended to cover those subjects.

Now, the specific cases, I am sure, Mr. Miller, you are familiar with and I don't know that the other members of the Commission are. The names of the cases are *Steele v. Louisville and Nashville Railway Company*, 323 U.S. 192 and 65 Supreme Court 226 which was decided in 1944, and in the facts of the case it was found that the defendant union had discriminated against Negro employees on the railroad. I think they were firemen. The Supreme Court held under that statute that the defendant union was given the exclusive right to bargain on behalf of the employees and that since it had derived its powers from the statute it had statutory duties.

I think the same thing applies with respect to an employer. It derives powers with respect to employer-employee relationships from the statute, therefore statutory duties should follow, and in essence the holding of the case was that the defendant labor union could not deny, restrict, destroy or discriminate against the rights of those for whom it legislates, which is also under an affirmative constitutional duty equally to protect those rights.

A companion case to that, which I won't go into in detail, which in essence holds the same thing, is the case of *Tunstall* against the *Brotherhood of Locomotive Firemen*, 323 U.S. 210, 65 Supreme Court 235, also decided in 1944.

Now, I think even more clear than the occupation of this field, the preemption of it, by the Congress of the United States Government are the provisions of the Civil Aeronautics Act of 1938, and I refer first of all to Section 484(b). It is 49 U.S.C.A. 484(b).

Now, I would like to point out to the Commission that the caption of this particular section of the Civil Aeronautics Act, at least as set forth in the United States Code Annotated, is entitled "*Rates for Carriage of Persons and Property*" which on its face wouldn't seem to apply to the matter of racial discrimination which is now before the Commission. Section (b) of that portion of the statute says "No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage

to any particular person, port, locality or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Now, considering the language of that portion of the [fol. 190] statute, there has been judicial decision under that section of the statute, and the name of that case is *Ella Fitzgerald, et al., v. Pan American World Airways*, and the citation to it is 229 Federal Second at page 499, decided by the United States Court of Appeals for the Second Circuit in 1956.

In this action *Ella Fitzgerald*, a famous singer, brought a suit for damages against *Pan American Airways* for discriminating against her and some people who were traveling with her in air transportation on *Pan American*. Now, in the first instance the trial court dismissed the case for lack of jurisdiction, because there was no diversity of citizenship, but in reviewing the case the same section of the Civil Aeronautics Act that I just read to you was brought to the attention of the court and the court held that Section 484(b) is for the benefit of persons, including passengers using the facilities of air carriers, and it went on to hold that under this Federal Statute the plaintiff, *Miss Fitzgerald*, and others, had a right to bring a civil action for damages under the Civil Aeronautics Act as a result of the discrimination.

Now, there is one particular short paragraph in the opinion that I think should be called to your attention and it appears at Page 502 of 229 Federal Second, and the court says—

Chairman Miller: When was that decided?

Mr. Westfeldt: 1956, January 26.

Chairman Miller: I notice you have the advance sheets. [fol. 191] Mr. Westfeldt: No question it is in a bound volume now, I am sure.

The court said: "Although we regard it as not controlling, we note also the following: Congress sought uniformity in the practices of those subject to this Act. It is by no means clear that, in all States and territories, the com-

mon-law rules would render unlawful racial differentiations in accord with the 'separate but equal doctrine', whereas, in the light of recent Supreme Court decisions, we must construe Section 484(b) so that that doctrine will not apply." And in essence the court did hold that under this section of the Civil Aeronautics Act the racial discrimination complained of was an action arising under the law of the United States and the Federal jurisdiction.

Now, I think it is interesting to note that that case arose under this section 484(b) that I have just referred to, which I think the first time I read it, and I am sure the first time you take a look at it, too, you wouldn't see just apparently on its face that it covers this specific thing involved, but by judicial decision it does.

Chairman Miller: Has that been appealed to the Supreme Court?

Mr. Westfeldt: No, sir, it has not been appealed beyond the Second Circuit.

Now, there is still another provision of the Civil Aero-[fol. 192] nautics Act which is Section 402, and particularly paragraph (c) of that Section, and, incidentally, these section numbers that I am referring to are the section numbers that appear in Title 49 of U.S.C.A. rather than the section of the Act and the particular statute as enacted.

The Declaration of Policy of the Civil Aeronautics Act reads in part as follows: "In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity."

Now, skipping over to paragraph (c) since the others I don't think are applicable, one of these items that are in the public interest is "The promotion of Adequate, Economical, and Efficient Service by Air Carriers at Reasonable Charges, Without Unjust Discriminations, Undue Preferences or Advantages, or Unfair or Destructive Competitive Practices."

Now, I will submit to this Commission that the portion of 49 U.S.C.A., Section 402, that I have just read, is even broader than the Section 484(b) that I discussed a few minutes ago, and I would like to just add, in addition to

what I have pointed out to the Commission already, that even if the Congress hasn't treated specifically and in detail the matters of employment in relation to race, religion, and so on, in the airline industry, the States still are not [fol. 193] permitted to legislate in areas affecting interstate commerce where a lack of uniformity in matters of national concern would result.

Now, there is authority for this proposition, too, and the title of this case is Bethlehem Steel Company v. The New York State Labor Relations Board, 330 U.S. 767, 67 Supreme Court 1026, decided in 1947. Among other things in that case the court held, "It has long been the rule that exclusion of State action may be implied from the nature of the legislation and the subject matter, although the express declaration of such result is wanting."

Now, I think that that line of reasoning, coupled with the Fitzgerald Case, which pointed out that Congress sought uniformity in the practices of those subject to this Act, indicates this necessity of uniformity even in cases where State policy and Federal policy are in sympathy, and that that same identical State statute which moves into this area and which results in un-uniform regulation is unconstitutional, and a case in which such a statute was stricken down is the Wabash, St. Louis, and I think it is Peoria Railway Company against Illinois, 118 U.S. 557, 7 Supreme Court 4. I will admit that is an antique case. It was decided in 1886, but the court did say that the species of regulation involved were of a type "which must be, if established at all, of a general and national character and cannot be safely and wisely remitted to local rules and local regulations", and the language in other cases also [fol. 194] supports the same proposition, that the lack of uniformity resulting from State action cannot be permitted in matters affecting the national interest in the free flow of interstate commerce.

Now, just consider the Respondent, Continental Air Lines, for a minute, an interstate carrier by air, operating in many States. I don't know what the other States have. I would dare say that it could be very easily ascertained that maybe some of these States have a statute similar to the Colorado Statute, maybe they don't in Texas, maybe

they have ones that vary in language and vary in import so that the non-uniform burden that is placed on an interstate carrier by air, where it is operating in different States and hiring in different States, makes the carrier subject to many local rules that might vary and might be in conflict. I think the Commission would certainly admit right off the bat that if the matters complained of by Mr. Green in this proceeding had transpired in the State of Illinois or in the State of Texas or in the State of California, that this Commission would not have jurisdiction, and I think the fact that the Respondent operates in all of these States, that its employees, such as pilots and hostesses, mechanics and everything else have moved from State to State and things of that nature, that it is very easy to see the necessity for uniform regulations.

We think that the Federal Statutes cover the subject, we submit to this Commission that they do, and under [fol. 195] those circumstances where the Federal Government has occupied the field, why, the State law is inoperative and an attempt to extend it into this area is unconstitutional.

Chairman Miller: Let me ask you Mr. Westfeldt, is it your position that the Civil Aeronautics Act has preempted the entire field so that State legislation, whether consistent or inconsistent with the Federal Act, would be inapplicable?

Mr. Westfeldt: Both the Civil Aeronautics and the Railway have occupied the field to such an extent that the State law is inapplicable and an effort to extend the State law to a Respondent such as Continental under these circumstances is an unconstitutional application of the Act. I think that is perhaps the best way to state it. And I only want to mention one other thing on this business of preemption and occupation of the field. I want to refer the Commission also to another case entitled Guss v. Utah Relations Board, and it is at 353 U.S., page 1, and it is a recent case. I don't have the Supreme Court Reporter citation to it. I know it was decided within the last couple of years. This is an outstanding case of preemption of a field of law by the Federal Government. The statute in question was the Federal Labor Relations Act, the Taft-Hartley Act, or the National Labor Relations Act, as

amended. In that case the National Labor Relations Board declined to hear an unfair labor practice charge and they declined to hear the unfair labor practice charge because [fol. 196] the employer didn't meet the jurisdictional yardsticks established by the Board itself, and furthermore under Section 10(a) of the Taft-Hartley Act, the National Labor Relations Board had not ceded jurisdiction to the State Board, which it could do.

Now, the decision of the United States Supreme Court on this subject was, that notwithstanding the fact that the National Labor Relations Board wouldn't take the case and wouldn't hear the unfair labor practice charge because it had set up these jurisdictional yardsticks and therefore the claimant in the case had no recourse to that Board, that nevertheless because Federal legislation had occupied the field, the field was occupied exclusively, there had been no cession of jurisdiction to the State Board, and in effect the complaining party in the case had no remedy whatsoever. It was a No Man's Land. He couldn't go to the State Board because they didn't have jurisdiction, he couldn't go to the National Labor Relations Board because it hadn't elected to exercise the jurisdiction that it could act. Under these circumstances claimant was left without a remedy. The State Labor Board could not act under the Utah Labor Statute.

Now, this is just another example, and I am sure that you are familiar with the tremendous number of cases along this line in recent years, and it is under those circumstances and because these Federal Acts already cover it, and I don't think there is any No Man's Land here, that it is our position that for this Commission to act in this matter [fol. 197] and attempt to extend the Colorado Anti-Discrimination Act of 1957 to the case now pending against Respondent Continental Air Lines is beyond your jurisdiction, and I say that respectfully, and an attempt to do so and apply the Act in this way is unconstitutional. If the Act even purports to act in this way, the Act is unconstitutional in that respect.

Mr. White: May I ask you a question?

Mr. Westfeldt: Yes.

Mr. White: You quoted the Taft-Hartley law. Isn't there a clause in the Taft-Hartley law that where States have their own labor law, if that law is more restrictive than the Taft-Hartley law, then it will take precedence?

Mr. Westfeldt: That is under Section 14(d), I think, of the Act. I think there is a specific provision of that nature in the statute which, as I would express it to you, does cede jurisdiction to that extent to the State Labor Boards and State law.

There is another provision in the Taft-Hartley Act, Section 10(a) which specifically permits the NLRB in a specific area where State laws are compatible with the Federal law, they can also cede jurisdiction to a State Board. But this is a case where that is expressed in the statute and there is no such expression in the Civil Aeronautics Act or the Railway Labor Act that I know of. So I think that they are quite different in that regard.

[fol. 198] Mr. White: I want you to talk to me from now on so I can understand you.

Mr. Westfeldt: I will do my best.

Chairman Miller: Mr. Sayers? Excuse me, have you completed?

Mr. Westfeldt: Yes, I have, Mr. Chairman.

COLLOQUY

Mr. Sayers: Mr. Chairman, the question raised by the Respondent, of course, is a matter which I think will have to be finally settled in the courts. Receiving the answer just possibly ten minutes before this hearing, complainant certainly is not in position at this time to make answer to the statements made by Respondent. I feel, however, that this law of our State applies to those employment persons, persons employing who are residents of the State, who have their offices within the State, it would seem to me. I think this Commission certainly has a right under our Act to at least hear the evidence at this time which the Complainant has to offer, and I think perhaps the legal questions may have to be decided later. As I say, since I received this answer just possibly ten minutes before the hearing time, I am certainly not in position to discuss the matters raised by respondent.

Chairman Miller: I would suggest this. There are two constitutional questions, basically, I think that are raised. First, I think the actual constitutionality of the Colorado Anti-Discrimination Act itself is raised.

[fol. 199] Mr. Westfeldt: That is correct.

Chairman Miller: Which, of course, we would not pass on. I mean we assume that it is constitutional and valid. The other one is the question of jurisdiction, primarily, which you are raising, within the Commission upon the ground that the acts of the Respondent are solely within the jurisdiction of the Federal Government under the Civil Aeronautics Act and the Railway Labor Act. On that phase I would like to suggest that possibly you furnish us with a memorandum brief because I think we do not have the right, certainly, to pass on the question of whether or not we have jurisdiction. But I think we ought not to pass on that question now without briefs being submitted on both sides. That should not take too long, should it?

Mr. Westfeldt: No, Mr. Chairman. Do I understand that you would like such a memorandum brief devoted solely to the question of jurisdiction and not to the question of constitutionality?

Chairman Miller: No, I don't think this Commission would determine, however valuable your argument might be, that the Act is unconstitutional. I think that would be within the jurisdiction of the courts rather than this commission. But certainly this Commission can determine whether or not it has jurisdiction to hear certain matters.

Mr. Westfeldt: I would be glad to furnish a memorandum [fol. 200] on the subject of jurisdiction. I understand the Commission's position on that and I will furnish such a brief.

Chairman Miller: Is ten days too short?

Mr. Westfeldt: No, I can do it in ten days, I am sure. I particularly want the record to show that the question of both constitutionality and jurisdiction has been raised and asserted and made a part of this record so that it is available to the Respondent in the event of an appeal.

Chairman Miller: Yes, it is here in the first instance, that is correct. I think we ought to hear the evidence and then consider all the factors, both with respect to the mat-

ter of jurisdiction and the matters of fact. Any members of the Commission who feel otherwise?

Then if you will furnish a copy to Mr. Sayers.

Mr. Westfeldt: I certainly will.

Chairman Miller: And if you will furnish the Commission, too, with yours?

Mr. Sayers: Yes.

Mr. Westfeldt: Would these be simultaneous briefs that you have in mind?

Chairman Miller: No, what I had in mind was you furnishing a brief to Mr. Sayers.

Mr. Westfeldt: Then he would have ten days to reply?

Chairman Miller: Yes.

Mr. Sayers: I think so.

[fol. 201] Chairman Miller: The sooner the better.

Then we will proceed on the allegations of the Complaint. Is Mr. Green here?

STATEMENT IN BEHALF OF COMPLAINANT

Mr. Sayers: I have a statement first. Mr. Chairman and Members of the Commission, I thought perhaps it would be well to first make a short statement as to what we expect the evidence to show here.

As Commission Members, you are aware of the fact that the law says that there shall be no discrimination in hiring or in upgrading, and so forth, minority groups because they are Negroes. That is the gist of the matter. By Section 5(1) of Chapter 176 the law defines a discriminatory or unfair employment practice as follows:

Mr. Westfeldt: May we recess the hearing for a couple of minutes while Mr. McClearn takes this phone call?

Chairman Miller: Yes.

(Short recess taken.)

Chairman Miller: You may proceed.

Mr. Sayers: As we were about to say, Section 5(1) of our Anti-Discrimination Act defines a discriminatory and unfair employment practice as follows: "For an employer to refuse to hire or to discharge or to promote or demote or to discriminate in matters of compensation against any

person otherwise qualified because of race, creed, color, national origin or ancestry." Section 4 says it shall be discriminatory or an unfair employment practice for any employer to use any form of application for employment or to make any inquiry in connection with a prospective employment which expresses either directly or indirectly any limitation, specification or discrimination as to race, creed, color, national origin or ancestry, or intent to make any such limitation or discrimination unless based upon bona fide occupational qualifications as far as required by or given to an agency of the government for security reasons.

We feel, and we feel the evidence will show, that the complainant, Marlon D. Green, was discriminated against in that the application that was furnished him first required a photo, and second, it required the designation of race. We also feel that the evidence will show that Marlon Green was well qualified as a pilot. He was brought here from the East, given an interview but was not hired, and we think we can show he was not hired because he was a Negro. I think the Commission should answer the following questions as we present the evidence.

First, was Marlon D. Green refused employment because he is a Negro?

Second, did the application form filed by Mr. Green contain discriminatory specifications?

Third, did the Respondent make inquiries of Mr. Green expressing any limitation, specification or discrimination because of race, creed, color, national origin or ancestry? [fol. 203] Fourth, does Mr. Green possess the required qualifications for a commercial airline pilot?

Five. Was the Respondent justified in not hiring Mr. Green as a pilot?

If you find that they were justified in not hiring Mr. Green as a pilot, you will, of course, order the dismissal of the Complaint. If you find that Mr. Green was discriminated against, then you have the right to issue a cease and desist order.

I believe we are ready now to proceed.

Chairman Miller: Mr. McClearn, would you like to make a statement at this time?

Mr. McClearn: Would you like me to make a short statement at this time to express our position to the Commission?

Chairman Miller: All right.

STATEMENT IN BEHALF OF RESPONDENT

Mr. McClearn: I would first of all like to thank the Commission. This hearing was previously set for April 23 and at our request it was postponed until today because two of our operating people, Mr. Weiler and Mr. Hauter, were out of town. Actually, they were out of the country. They were in England and I am sorry to say they still are in England. We have not asked for a further continuance, but depending upon what matters are brought before you, it is possible that we may ask that the proceedings remain [fol. 204] open until we can obtain their testimony perhaps by way of deposition, but I do want to thank you for giving us the extension that we did ask for.

With respect to the allegations of the Complaint, we hope to present to you in some considerable detail the employment practices of the Respondent, Continental Air Lines, and that will involve going into some detail into the qualifications of commercial airline pilots, the procedure that Continental follows in obtaining applicants, interviewing them, and in selecting them for employment to fly its aircraft. We will, of course, also present testimony with respect to our dealings with Mr. Green and his interview at Continental and the procedures that were followed with respect to his case.

With respect to the specific allegations of the Complaint, the first, or one of them, is that Continental on its application form requires a photograph. We do require a photograph. We have for many, many years long prior to the passage of the Discrimination Act. We will show you that this has been our consistent practice customarily followed both in our industry and in other industries, and it certainly isn't for the reason of discriminating by reason of race, creed, color, or for any other reason, but that it has a legitimate business purpose.

Chairman Miller: May I interrupt, Mr. McClearn? Is it your position, also, that it is one of the exceptions within the Act? You allege that it is based upon a bona fide occupational qualification. Do you go beyond that as well?

Mr. McClearn: I am not certain I understand you, Mr. Miller. The Act itself in specific terms doesn't prohibit the use of a photograph. As I read it, it prohibits the use of anything with the intent to discriminate. We will show that we use a photograph or ask for a photograph with no intent to discriminate but for another purpose, for a legitimate business purpose.

Chairman Miller: Is that the Act?

Mr. Sayers: Yes.

Chairman Miller: What I was referring to, there is specific language in the Act about exceptions in the case of a bona fide occupational qualification. All I am asking now is whether or not your position is that the photograph is the exception permitted under the bona fide occupational qualification and whether or not you go beyond that as well.

Mr. McClearn: Yes. I would say your inquiry is two-fold when we are talking about the photograph. First of all, do we have it with intent to discriminate, and we hope to show you we certainly don't. Secondly, we hope to show, even if it did discriminate, it is based on a business reason or an occupational qualification, but I don't think we even got to that point, Mr. Miller.

Chairman Miller: This is a provision in the Act to which I am referring. Section 5(4): "For any employer to make [fol. 206] any inquiry, either directly or indirectly, any limitation, specification or discrimination as to race, creed, or color, or intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification".

Mr. McClearn: Our basic position is that this has nothing to do with discrimination. We are not seeking to say that it discriminates but we come within a qualification. We are saying it has no—

Chairman Miller: You are saying this provision has no application because you don't discriminate at all.

Mr. McClearn: It certainly has nothing to do with discrimination.

Chairman Miller: All right, sir. I am sorry to interrupt you.

Mr. McClearn: Then with respect to the other allegations, another one is whether our application form calls for the indication of race. We have admitted in our Answer that it did. That form was changed in 1954 and we certainly don't have that in our form now. There is no reason for it.

The other specific allegation is that Mr. Green was not notified within ten days as to whether we were going to hire him. The fact of the matter is, which our evidence will show, that he was notified but that the notification to him was misdirected and as soon as this was called to our attention [fol. 207] we did notify him at his then current address.

That, in synopsis form, is what we hope to show, what we intend to show and we are confident that at the conclusion of the hearing the Complaint will be dismissed.

Chairman Miller: All right, sir.

Mr. Sayers: Mr. Green, will you take this chair over here, please?

MARLON D. GREEN, called as a witness in his own behalf, was duly sworn and testified as follows:

Direct examination.

By Mr. Sayers:

Q. Mr. Green, will you state your full name and address?

A. My full name is Marlon DeWitt Green, resident of 608 North Logan, Lansing, Michigan.

Q. What is your present occupation, Mr. Green?

A. I am the Department Pilot for the Michigan State Highway Department.

Q. And are you the same Marlon D. Green that filed complaint with the Colorado Anti-Discrimination Commission and which we are hearing at this time?

A. I am.

Q. When did you file such complaint?

A. An initial letter of contact to the Colorado Anti-Discrimination Commission was sent in early August 1957, outlining my belief that the law had been violated in these circumstances as explained in that letter. Subsequently I [fol. 208] received correspondence from the Commission with official forms to be filled in and returned for further action to conclude this matter.

Q. What is your present occupation, Mr. Green?

A. I am a pilot for the Michigan State Highway Department, in which capacity I act as the provider of executive transportation for highway officials who have to travel in any capacity in connection with their duties. Further, to take engineers or specialists on survey trips to review highway locations and construction progress, and as our equipment is received we expect to perform aerial photography for the purpose of highway construction.

Q. What did you do before entering upon your present employment?

A. Immediately prior to my present employment I was unemployed for four months while seeking employment as an airline pilot. Prior to that period of unemployment I was an officer in the United States Air Force, Pilot Officer.

Q. When did you enlist in the United States Air Force?

A. The date of enlistment was the 5th of February, 1948.

Q. What was your rank at the time of enlistment?

A. I was a private.

Q. When were you selected for pilot training?

A. I received notification, I believe in November of 1949, [fol. 209] with a reporting date for training in March of 1950. I was in Hawaii at the time and the reporting location was to be San Antonio, Texas.

Q. What educational qualifications were required for pilot training?

A. Applicants must be high school graduates and must have the equivalent to, well, anyway, to please the Air Force, of two years of college or two-year college equivalency was the requirement succinctly.

Q. What air force schools did you attend during your tour of military duty?

A. Besides the Air Force Pilot Training, which was a course of one year's duration in which I trained in a T-6 Trainer and the B-25 Light Bomber, I attended and completed the combat crew training school at Randolph Field, San Antonio, Texas, in the B-29 type airplane. Subsequently, the Squadron Officer Course for administrative training for Air Force Officers at Maxwell Field, Alabama. The C-97 Heavy Transport Transition School at West Palm Beach, Florida, the B-29 Aircraft Commander Transition School at Randolph Field, San Antonio, Texas, the Air Force Amphibian Training School at West Palm Beach, Florida. Those are the extent of the courses.

Q. And did you complete all the prescribed courses of study required for pilot training?

A. I did.

[fol. 210] Q. Do you have any documentary evidence that the prescribed courses of study were completed satisfactorily?

A. I do.

Q. Of what does that consist?

A. I have in my individual possession, not available to us at this moment, individual certificates of completion which are summarized and concluded in my Air Force Discharge paper, Form 214, which is an official document available to the Commission at this time.

Q. I hand to you herewith a document which I will ask you to name. Tell the Commission what it is, first.

A. This is a copy of my Discharge Certificate, officially commonly referred to as the DD Form 214.

Chairman Miller: Excuse me, do you propose to introduce this?

Mr. Sayers: I want to introduce it after he has told us what it is.

Chairman Miller: Do you want to have it marked as an exhibit first?

Mr. Sayers: As an exhibit first.

(Complainant's Exhibit 1 was marked for identification.)

By Mr. Sayers:

Q. I will ask you again now since this document has been marked Complainant's Exhibit 1, if you will tell the Commission what it is.

A. This is a photostat of the Air Force Discharge Record [fol. 211] commonly referred to in the Air Force, anyway, as the DD Form 214.

Q. And does this show the schools and training that you have had?

A. It shows the formal schools and training which were completed in the Air Force. I would like to point out it does not list specifically the thing which might be assumed very reasonably, that I completed the Air Force Pilot Training School. That was not listed as one of the schools here since at the time of completing this form it did not seem a requirement to say that a man who has flown through all these different flying schools as a pilot had to go to the pilot training school first. So I beg to point out that that is not shown here, that I completed the initial training course as a pilot. Do we have that information available? Then I would like the privilege of submitting it.

Chairman Miller: Let's pass on this exhibit first.

Mr. McClearn: We have no objection.

Chairman Miller: No objection? It will be admitted. Thank you.

(Complainant's Exhibit No. 1 was received in evidence.)

The Witness: Mr. Chairman, it has been pointed out that perhaps for clarification I should identify the particular section of this DD Form 214 which contains certification of my Air Force schooling, of flight training.

[fol. 212] Chairman Miller: All right. You are referring now to Complainant's Exhibit 1?

The Witness: Exhibit 1, Section 28, Title "Service Schools or Colleges, College Training Courses and/or Post-Graduate Courses successfully completed."

Mr. Sayers: Then he has given the list of the schools that you have completed, is that correct?

The Witness: Right. Further, I would like to refer to Section 29. Incidentally, "Armed Forces Intelligence Test

Passed", they call it the 2CX Test, it was a military defense department test. 2CX means a 2-year college equivalent, which was passed in 1952 as shown in Section 29 of this same document.

Chairman Miller: All right, you may proceed, Mr. Sayers.

Mr. Sayers: I should like to have this marked Complainant's Exhibit 2.

(Complainant's Exhibit No. 2 was marked for identification.)

By Mr. Sayers:

Q. Mr. Green, I will ask you to look at the document numbered Complainant's Exhibit 2 and tell the Commission what it is.

A. This is a copy of the personnel order declaring myself, among numerous other persons listed, as Air Force Rated Pilots. The final statement, I will read this item, if I may, "Having completed—

[fol. 213] Q. Wait a minute.

Mr. Sayers: Would you care to see this?

I should like to offer this in evidence.

Chairman Miller: Any objection, Mr. McClearn?

Mr. McClearn: Is that a two-page document? This isn't the complete document, Mr. Green.

The Witness: There were other names on the reverse side of that document.

Mr. McClearn: No objection.

The Witness: On the reverse side also is shown an official certification. However, this letterhead is offered as being official and reproduction of the reverse side can be obtained, I am sure.

Chairman Miller: This is a reproduction of the original?

The Witness: That is a reproduction of the front side of the original.

Mr. Sayers: We do have the original. We can provide the back if you want it.

Chairman Miller: It is not necessary. Complainant's Exhibit No. 2, then, will be admitted in evidence.

(Complainant's Exhibit No. 2 was received in evidence.)

By Mr. Sayers:

Q. Mr. Green, does your name appear on Complainant's Exhibit No. 2?

[fol. 214] A. It does.

Q. And what does it show generally, can you give us a brief statement of what this Complainant's Exhibit No. 2 exhibits?

A. This is an official document required by Air Force Regulations prior to the assumption of flight duty by a rated pilot. He must be declared officially as being rated. This document so declares me among others.

Q. And what date do they say that you are rated as a pilot?

A. As of 24 March 1951. This document is dated 23 February 1951.

Chairman Miller: May I ask, is this the first rating that you had as a pilot?

The Witness: This is the result of the successful completion of the Air Force Pilot Training School, that you are declared a rated pilot and incidentally commissioned as a Second Lieutenant, in my case. I would like to point out that some others were officers as they were going through the pilot training program. I think that is understood.

By Mr. Sayers:

Q. Mr. Green, what kind of aircraft did you fly during your military career?

A. My training commenced in a T-6 Trainer, subsequently in a B-25. After being rated as a pilot as shown in Exhibit 2, [fol. 215] I flew the B-29, the B-26, the SA-16, the C-45, or a Twin Beach as it is commonly known, and though not as a qualified First Pilot, I did fly the C-97 and the C-47, or DC-3 as it is commonly known.

Q. Mr. Green, for the benefit of those who are not familiar with the different types of planes, I wonder if you would describe to the Commission the T-6, what does that mean, what does "T" mean?

A. "T" is an Air Force designation, I mean in reference to airplanes is an Air Force designation for Trainer Force

Airplane, and this particular airplane is built by the North American Aviation Company, designed as a vehicle for initial pilot training, at least that is what it was used for at the time of my training, initial indoctrination in the fundamentals of aviation.

The B-25, as used during the Second World War, is a light bomber, or was called then a medium bomber, subsequently redesignated as a light bomber.

The B-29 was a very heavy bomber originally. As things progressed it became, I think it is classified now as a medium bomber.

The B-26 Twin-Engine Airplane designed and built by the Douglas Aircraft Corporation of California which was during the World War classified as a medium bomber, presently classified as a light bomber, almost extinct any more in the Air Force.

[fol. 216] The SA-16 is an amphibian airplane and used during my training as a rescue vehicle.

The C-45 was commonly used as an Air Force executive transportation or utility airplane.

The C-97 is a transport designed by the Boeing Company, used by commercial airlines for intercontinental routes primarily.

The C-47 is very commonly known as the work horse of the Air Force or for commercial aviation, for that matter.

Q. Now, Mr. Green, how many flying hours have you logged?

A. I have logged at the present time a total of approximately 3400 hours. As of July—pardon me, June 26, 1957, my official record shows 3,071 hours, approximately.

Q. And do you have any documentary evidence to show the flying hours that you have logged?

A. I do have.

Q. And of what does that consist?

A. I have the final sheet of my Air Force Form 5, which usually is a monthly compilation of flying time by the individual pilot. This is an official document of the United States Air Force. The original copy of this document which you will see here is on file with the Director of Flight Safety Research, Norton Air Force Base, California.

Mr. Sayers: I should like to have this exhibit marked Exhibit 3.

[fol. 217] (Complainant's Exhibit No. 3 marked for identification.)

By Mr. Sayers:

Q. Mr. Green, I will ask you to look at Complainant's Exhibit 3 and tell the Commission what it is.

A. This is the Air Force Form 5 known as the "Individual Flight Record" for pilot, and this happens to be my personal copy, copy of my own flight record for this particular month. May I include this—

Mr. Sayers: Just a minute.

Mr. McClearn: No objection.

Chairman Miller: Have you offered this?

Mr. Sayers: I would like to offer Complainant's Exhibit No. 3.

Mr. McClearn: No objection by Respondent.

Chairman Miller: Complainant's Exhibit 3 will be admitted.

(Complainant's Exhibit No. 3 was received in evidence.)

By Mr. Sayers:

Q. Mr. Green, I will ask you to refer to Complainant's Exhibit No. 3 and tell the Commission what it is.

A. This is the Air Force Form 5 for Air Force Pilot First Lieutenant Marlon Green as of March 1957, listing the accumulation of flying time for that particular month, and in connection with that flying time for that month it [fol. 218] shows the accumulated flying time for Green's Air Force Flying career. This is the last one issued for myself during my tour of duty in the United States Air Force.

Q. And will you break down the items of that report so that the Commission may know just what it shows?

A. This form shows that during the month of March 1957 the only type airplane flown by Pilot Green is the SA-16A, and I will go on then to break down the particular

classifications of First Pilot Time which were instructor pilot time. This was not for the month of March, I would like to point out, but this is an accumulation or the summation of these totals. By classification they are instructor pilot time 166:30, that is 166 hours and 30 minutes; first Pilot time, 1838 hours and 15 minutes; First Pilot time, day, VFR (Visual Flight Rules), 1348 hours even; day, weather instrument time, 99 hours and 40 minutes; First Pilot night time under visual flight rules, 319 hours 45 minutes; First Pilot night time under weather instrument conditions, 53 hours 50 minutes; First Pilot flight time under hooded-in flight conditions, 183 hours 30 minutes.

The next section is the classification of copilot flying time, total copilot flying time 778 hours 45 minutes; copilot, day, visual flight rules, 582 hours 20 minutes; copilot, day, under weather instrument conditions, 46 hours 35 minutes; copilot flight under visual flight rule conditions, 124 hours, 55 minutes; copilot night flying time under weather instrument conditions, 24 hours, 55 minutes.

On the reverse classification—pardon me, the title is “Summary of Pilot Experience”. Duty, aircraft instructor pilot, single engine 37 hours; aircraft instructor pilot, twin-engine, 129 hours 30 minutes; total, 166:30.

First Pilot time, single-engine, 72 hours 35 minutes; First Pilot time twin engine, 1469 hours 40 minutes; First pilot time more than two engine, 292 ten minutes; single jet propulsion, First Pilot time, 2 hours even; multijet propulsion First pilot time, 25 minutes; rotary wing type, including helicopters, which was a helicopter, rotary wing type, 1 hour 25 minutes. Total First Pilot time, 1858 hours 15 minutes—I am sorry, First Pilot 1838 hours 15 minutes. Copilot time, single engine, none; twin engine, 466:05.

Chairman Miller: That is what, “05”, 5 minutes?

The Witness: 5 minutes, I am sorry.

More than two engine copilot time, 308 hours 15 minutes; copilot time, rotary wing 4 hours 25 minutes; total, 778 hours 45 minutes; total pilot time as a student, 288 hours even. Total pilot time subsequent to student training, 2,783:30. May I check the original on that?

Q. That is correct.

A. Total Air Force flying time, student and sub-student—I mean post-student—3,071 hours 30 minutes.

Miscellaneous entries on this same form, GCA approaches [fol. 220] under actual conditions, 150.

Chairman Miller: What is a GCA approach?

A. Ground control approach, an approach by a radar observer on the ground giving verbal instructions to the pilot in flight making an instrument approach.

Instrument trainer, 127 hours. That is a link trainer which you may have heard of which simulates in-flight instrument conditions. The pilot is enclosed in what simulates an airplane cockpit and therein he flies prescribed maneuvers simulating in-flight or in-cloud conditions. And flight simulated hours totaled 4 hours.

Q. Is that the total showing of this Exhibit 3?

A. I feel it is the total significant showing.

Chairman Miller: Who authenticates this, Mr. Green?

The Witness: Directly, Major Lyle Davenport, on that form. In any case it would be the Operations Officer or someone directed by the Commanding Officer of the squadron. In the usual case it is the Operations Officer of a flight squadron.

Chairman Miller: This is all the army record?

The Witness: That is the Air Force record.

Chairman Miller: Air Force, excuse me.

By Mr. Sayers:

Q. Mr. Green, do you have a pilot's license?

A. I do.

Mr. Sayers: I would like to have this marked Complaint [fol. 221] and Exhibit 4, please.

(Complainant's Exhibit No. 4, marked for identification.)

Q. Mr. Green, I will ask you to look at Complainant's Exhibit 4 and tell the Commission what it is.

A. This is a copy of my pilot's license.

Mr. Manzanares: When you mention pilot's license, is that the license issued by the Civil Aeronautics authority?

The Witness: That's correct.

Mr. Manzanares: For a pilot in commercial or civilian aircraft?

The Witness: Right.

Chairman Miller: Are you offering this?

Mr. Sayers: Yes, I want to offer Complainant's Exhibit 4.

Mr. McClearn: No objection.

Chairman Miller: Complainant's Exhibit 4 will be admitted.

(Complainant's Exhibit No. 4 was received in evidence.)

Mr. McClearn: Could I have the date on that?

The Witness: 9-27-57. In connection with that date may I offer information.

Chairman Miller: You may inquire.

By Mr. Sayers:

Q. Mr. Green, will you read this Exhibit 4 to the Com-[fol. 222] mission, please?

A. This is a form issued by the Civil Aeronautics Administration, which certifies that Marlon DeWitt Green, giving permanent address, date of birth, height, weight, color of hair, color of eyes, sex, nationality, has been found to be properly qualified to exercise the privileges of commercial pilots—pardon me, commercial pilot with license No. 1364938.

Q. Who is that signed by?

A. I would like to quote these ratings first, airplane single engine land, and at this point I would like to offer some information for the benefit, I think, of the Respondent, that at the time of my application to the Respondent this particular qualification as Airplane Single Engine Land was not in my possession. It is not relevant to the hearing at hand, but I would like to point that out as being a fact. However, at the time of my application to Continental Air Lines, Respondent, I did possess the qualifications and ratings and limitations shown here.

Airplane Multiengine Land and Sea with Instrument Rating. It is signed by Roy Keeley, and the date of this particular form is 9-27-57. This particular form was issued subsequent to my application to Continental Air Lines as

a result of my having achieved an additional rating, the single engine land rating as referred to.

Chairman Miller: As I understand your testimony, you [fol. 223] say certain qualifications were possessed by you at the time of your application to Continental, which qualified you to the extent of obtaining the certificate, the license?

The Witness: I would like to correct that to show at the time of my application to Continental Air Lines I did not possess a pilot rating for single engine type airplanes. This, of course, since Continental flies no single engine airplanes of course has no bearing on this particular case, but I would like to point out in fairness to the Respondent that my pilot's license as presented to Captain Cramp during interview did not show airplane single engine land license, in case any confusion might arise over that point subsequently.

Chairman Miller: What did it show?

The Witness: It showed airplane multi-engine land and sea with instrument rating, and on the 27th of September I accomplished a further rating, airplane single engine land, which modified that license and had to be reissued by the Civil Aeronautics Administration regulations.

Chairman Miller: Was there a previous license, then?

The Witness: That is what I am trying to say.

Chairman Miller: All right, sir. This has been admitted.

By Mr. Sayers:

Q. Mr. Green, are military pilots trained and instructed to take chances when flying?

[fol. 224] A. Your question is, are they?

Q. Yes, are military pilots trained and instructed to take chances when flying?

A. No, they are not.

Q. What was your military rank when you were discharged from the Air Force?

A. I was Captain.

Q. And why did you leave the Air Force?

A. To seek employment as a commercial airline pilot.

Q. After deciding to look for a job as a commercial airline pilot, how did you go about finding a job?

A. As soon as my interest and intent became definite, I sent letters while stationed in Japan to most of the major carriers in the United States and at the same time I made personal contact with some of the carriers who had offices in Japan, specifically Tokyo. Subsequent to my return to the United States I made personal applications as well as pursued some applications by mail and by telephone.

Q. And did any of the airlines to which you applied or private carriers turn down your application because of your color?

A. There were direct expressions of refusal based on my color. To quote one company—

Mr. McClearn: Excuse me. I have no objection to the evidence, as such, but I would like to point out I don't think [fol. 225] it is material to this inquiry.

Chairman Miller: I agree it is not material here. I think it should be confined solely to this particular application.

By Mr. Sayers:

Q. Mr. Green, you made application to the Continental Air Lines at this time or approximating this time, did you?

A. I returned to the United States from Japan on the 20th of April, 1957, and sometime before the end of April, I don't remember the date on my initial application, I sent an application form which had been secured through the San Francisco office of Continental Air Lines. I sent this form to the Denver office for consideration for pilot employment.

Q. And do you have a copy of that form with you by any chance?

A. The application form?

Q. Yes.

A. No, I do not have.

Q. After you made your application, what was the response of the Continental Air Lines?

A. I received a letter, oh, within three weeks, I don't remember the time that transpired, I received a letter saying that "we are not hiring pilots at this time. We will keep your application on file and contact you when we are considering pilots for employment in the future."

[fol. 226] Q. What job did you make application for?

A. For airplane pilot or airline pilot, copilot specifically.

Q. Did the application form which was given to you have an indication as to race or color on it?

A. Yes.

Q. And when you made the application, when you filled out the application, did you fill in the designation as to your racial character?

A. I did.

Q. Did Continental Air Lines know, so far as you know, that you were a Negro?

A. No.

Q. Whether or not you were a Negro.

A. No, I had no knowledge that they knew my race.

Q. When were you asked to appear for an interview, if ever?

A. I think I received a telegram in New York on, I believe—I am not sure of the date, sometime around the 20th of June, essentially asking, "Are you still interested in pilot employment with our company?"

Chairman Miller: What year?

The Witness: Pardon me?

Chairman Miller: What year?

The Witness: I am sorry, June 1957, and this telegram [fol. 227] I believe is available to us here. This is the wire which I received.

Mr. Sayers: I would like to have this marked, please, as Complainant's Exhibit 5.

(Complainant's Exhibit No. 5 was marked for identification.)

By Mr. Sayers:

Q. Mr. Green, I will ask you to examine Complainant's Exhibit 5 and tell the Commission what it is.

A. This is a telegram from the representative of Continental Air Lines, Mr. Sorby, and the message contained—

Mr. Sayers: I should like to offer in evidence Complainant's Exhibit No. 5.

Mr. McClearn: No objection.

Chairman Miller: Complainant's Exhibit No. 5 will be admitted.

(Complainant's Exhibit No. 5 was received in evidence.)

Mr. White: I would like to ask a question. You asked Mr. Green on his application form whether he had filled out what his race was. Also in connection with that application form it asked for a photograph. Did you attach the photograph?

The Witness: I did not.

By Mr. Sayers:

Q. Mr. Green, I will ask you to examine Complainant's [fol. 228] Exhibit 5 and read it to the Commission.

A. It is a Western Union telegraph to Marlon Green from Denver, Colorado via El Dorado, Arkansas, with my address being listed 180 West 135th Street, New York, I presume; it doesn't show that here. I would like to strike that. "Advise by collect wire at earliest convenience if still interested in possible pilot employment in near future." Signed, Mr. Ken C. Sorby, Employment Manager, Continental Air Lines, Inc., Denver, Colorado.

Q. Mr. Green, I will ask you what was your response to that telegram?

A. I sent a telegram to Mr. Sorby indicating that I was indeed interested in pilot employment with his company and requested further instructions.

Q. And did you receive further instructions?

A. I did in a subsequent telegram.

Mr. Sayers: I would like to have it marked Complainant's Exhibit 6.

(Complainant's Exhibit No. 6 marked for identification.)

By Mr. Sayers:

Q. Mr. Green, I should like for you to look at Complainant's Exhibit 6 and tell the Commission what it is.

A. This is a telegram from Mr. Sorby of Continental Air Lines in response to my telegram in response to his initial one.

[fol. 229] Mr. Sayers: I should like to offer in evidence Complainant's Exhibit No. 6.

Mr. McClearn: No objection.

Chairman Miller: Complainant's Exhibit No. 6 will be admitted.

(Complainant's Exhibit No. 6 was received in evidence.)

By Mr. Sayers:

Q. Mr. Green, I will ask you to examine Complainant's Exhibit No. 6 and read it to the Commission.

A. This is a telegram from Mr. Sorby in Denver, Colorado, to Marlon D. Green, 181 West 135th Street: "Appreciate your coming to Denver for interview at earliest convenience Trans World Airlines pass New York/Denver roundtrip will be available for your pickup at airport ticket counter. Service charge of \$10 and other expenses will be to your own account. Advise approximate date of travel", and it is signed incorrectly, I think, Mr. Ken S. Corby, which should be corrected to Ken C. Sorby, I believe.

Q. Mr. Green, what was the next step after receiving this telegram?

A. Upon receipt of this telegram I notified Trans World Airlines' office in New York that instead of accepting travel from New York to Denver it would be to my convenience to travel by personal car from New York to Lansing, Michigan, [fol. 230] and then to accept airline transportation at Continental's expense from Detroit, Michigan, to Denver and return. This arrangement was made prior to my departure from New York, and after arriving in Lansing I made contact with the Detroit office of Trans World Airlines to confirm that this arrangement had been agreed on, and on the date of travel, which I do not remember now, I believe it was around the 24th of June, 1957. I reported to Trans World Airlines' ticket counter at Willow Run Airport, Ypsilanti, Michigan, for transportation to Denver. This transportation was arranged and completed.

Q. Do you remember the date that you arrived in Denver?

A. I believe it was the 24th, the night of the 24th.

Q. Of what year?

A. Of June 1957.

Q. And then what happened? Tell the Commission what happened on your arrival in Denver.

A. I am trying to think if I made any contact with Continental that night. I don't believe I did. I secured lodging and the next morning reported to the Continental office at Stapleton Airfield, Denver, asking for the Personnel Office, which I understood was at that location. I was corrected that the Personnel Office was located at another place than the Airport, and I asked then instructions as to where I should proceed for further information about my application or my processing. I was instructed to report to Captain Cramp, the Assistant Chief Pilot whose office is at the [fol. 231] Airport, and at this time I proceeded to contact Captain Cramp and place myself at his disposal.

Q. Will you proceed and tell the Commission what happened, how you met Captain Cramp and what followed?

A. I was directed to Captain Cramp's office, introduced myself, and talked with him briefly. He informed me that—among other things that we discussed, he said that I was the first Negro pilot who had ever applied to his company for a pilot job and it was the company's policy, in his words, to "Give everybody a crack at it." His next instruction to me was to proceed to the link trainer department in that same hangar at the airport for check ride in the link trainer.

I reported to the instructor to whom Captain Cramp had directed me, and when my turn came to take my check I completed it, and upon completion, Captain Cramp was standing by and he indicated his satisfaction at my performance.

Q. Mr. Green, let me interrupt here to ask you to explain to the Commission what is a link trainer?

A. A link trainer is a device for simulating instrument flight conditions. The student pilot is placed in this container and he has controls inside which are comparable to all the controls in the airplane, the regular flight controls, and he has instruments and he has a radio set on all the essentials for the performance if he is capable, and as I say, [fol. 232] it simulates instrument flight conditions, that is flying in the clouds when you have no reference to the ground or the horizon as a reference and you must rely solely upon your instruments which are available to you in the airplane, your radio, this is a navigational aid, and

to your piloting skill to maintain the airplane—well, to control the airplane as you desire it.

Q. After you had taken this link trainer test you say there was an expression by someone that you had successfully completed the test?

A. Captain Cramp expressed satisfaction at my performance and gave me further instructions for procedure.

Q. What was your next instruction?

A. Captain Cramp and I went back to his office, then, and talked about this matter again. I don't remember any particulars.

Mr. McClearn: Excuse me, Mr. Green, I don't mean to interrupt. I apologize that Mr. Cramp hasn't gotten here yet. He is on his way down. I wonder if it would be appropriate to take the noon recess so that we could reconvene when he will be present, when Mr. Green is testifying about your conversation with him.

Chairman Miller: Unless there is something else you would like to take out of order, although this, I think, is all right chronologically. Maybe it is just as well. It is approaching 12. Shall we recess until 2 o'clock.

[fol. 233] Mr. McClearn: At your convenience.

Mr. Manzanares: Until two?

Chairman Miller: Yes. I would like to do some of my own work, too.

Mr. White: Mr. Miller, I have a ticket to go down by Frontier to Pueblo at 4:45 and I don't know how long this is going to take.

Mr. Sayers: We won't start to be through by that time.

Chairman Miller: Unless you absent yourself, I would guess that we will be going all day.

Mr. Sayers: All day and part of tomorrow, I think.

Mr. McClearn: I don't want you to think I am trying to slow us down.

Chairman Miller: No, that is perfectly all right, because I have plans, too, and I think it fits in nicely. If it is agreeable, then, we will recess until 2 o'clock.

Mr. Westfeldt: Mr. Chairman, may I say one thing?

Mrs. Budin: Couldn't we come back at one?

Chairman Miller: Well, I am sorry, I really have things to do.

Mr. Westfeldt, did you have a comment?

Mr. Westfeldt: I did want to say, and it is off the subject of what is being discussed now, I am just not quite sure I said what I probably should have said with respect to [fol. 234] this constitutionality and jurisdictional question that I raised earlier, that I do want it in the record also to show that proceeding with the hearing on the merits in this case, the Respondent is not waiving its assertion of those rights and its assertion of those laws, and I just wanted to do whatever is necessary to preserve that.

Chairman Miller: I think the record will show that in every instance and particularly at the outset you will have raised the objection of constitutionality and jurisdiction and that you have renewed such objection wherever proper.

Mr. Westfeldt: Continental Air Lines does have an office within the State of Colorado and notice was given under the Act, and so personally we feel obligated to be here, but I don't want the proceeding to constitute a waiver by the Respondent.

Chairman Miller: I think the record shows that clearly.

(Whereupon, at 12 o'clock noon a recess was taken until 2 p.m. of the same day.)

[fol. 235]

AFTERNOON SESSION

2:00 p.m.

(Commissioner Robert Keeler was absent from the afternoon session.)

Chairman Miller: All right, Mr. Sayers.

MARLON DEWITT GREEN, resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Sayers:

Q. Mr. Green, during your interview with Captain Cramp, did you talk with him about your application blank?

A. Yes, I did:

Q. And will you tell the Commission in general what was said regarding your application?

A. In the course of a normal interview of this sort, it has been my experience that a man in Captain Cramp's position would sit down with the applicant and review the items of his application form, particularly those in Captain Cramp's position, which would pertain to operations or flying experience. These are mainly the things which we discussed on that day. They concerned my flying record in the Air Force, my flight log, which I am not sure now whether Captain Cramp reviewed that, but I believe that he did, and further we discussed an item in my application form concerning my race, and Captain Cramp was very appropriately interested in why I had not filled this item in. I would like to emphasize that his manner of inquiring about this was very appropriate, that he was just a bit curious [fol. 236] as to why this item had not been filled in. I indicated something to the effect that I did not feel that—being a Negro I would like to give myself every benefit of the doubt where my application was concerned, and I felt that the history of such entries on application forms had been that they had been used prejudicially against Negro applicants and for that reason I had not filled it in, and I explained something to this effect to Captain Cramp on that day.

Q. And did the Captain ask you to fill it in, to fill in that blank regarding your race?

A. Yes, he did, and I did so on that occasion.

Q. You did so on that occasion. Do you know whether or not up to this time, except at the time of your interview, did they know that you were a Negro?

A. I do not know whether Continental Air Lines knew my race or not.

Q. Did they require you to furnish a photo?

A. There was a request for a photo as a part of the application blank which I submitted from San Francisco to the Denver office.

Q. And did you finally furnish the photo?

A. No, I have not supplied one to this date.

Q. Was there any particular reason given for your filling in the name "Negro" in the blank so specified?

A. As it was indicated to me by Captain Cramp, it was a [fol. 237] matter of simply completing the form.

Q. What was the date of your birth?

A. 6 June 1929.

Q. What is your height and weight?

A. 6 feet in height, 190 pounds in weight.

Q. Have you ever been in an airplane accident when you were either acting as a pilot or as a copilot of the aircraft?

A. There was one aircraft accident in my training period, in fact, it was my first attempt at a takeoff in which neither the instructor nor I could recover from the situation I got in. We wound up on the side of the runway with a bent wing. Then further than that, there have been no aircraft accidents in my flight history.

Q. Returning now again to the conference with Captain Cramp, what else transpired after you went back in for your second interview with him?

A. I think I have indicated that I don't recall the details of this—this was between the link—it was on the day, my first day of meeting Captain Cramp. The period I think you are referring to is the period after I completed the link trainer flight.

Q. That is correct.

A. The link trainer test.

Q. That is correct.

A. Now, I do not recall the particulars of our discussion [fol. 238] at that time. However, I think they ran generally about pilot qualifications, the company's operating policy, its routes, possibly the number of pilots, the average flying hours and things of that sort. I do not recall anything in particular.

Q. Then what followed that interview, what was your next instruction after you had completed your interview with Captain Cramp?

A. I asked Captain Cramp if there was anything on that day that he desired me to do in connection with my processing or application, and he indicated that the next thing that he knew that I should do was to report to him on the following day for a flight check which he scheduled, I believe, for

11:30 on the following morning, and at that time I left the airport and returned to the city.

Q. On the following morning did you report for the flight check?

A. I did. At approximately 11 o'clock I arrived at the airport. I think we flew around 11:45 or 12 o'clock for 45 minutes.

Q. With whom did you fly?

A. With Captain Cramp.

Q. What was his expression after the flight as regarding your handling of the machinery, and so forth?

A. Every statement concerning the flight was that I had performed to his satisfaction, which is my impression to [fol. 239] date as to that flight.

Q. And then what happened after your flight?

A. Captain Cramp and I went back to the hangar after we had deposited the airplane at the passenger terminal, and I am not sure if we went to his office or not, but we did go to the cafeteria for the purpose of meeting Mr. Sorby. This had nothing, necessarily, to do with my application or with the processing of the application, but since I had communicated with Mr. Sorby in making arrangements to come to Denver, and he understood that Mr. Sorby was at the airport at that time. We went to the cafeteria in search of him. We finally found him there and made his acquaintance.

Q. Did you have an interview with Mr. Sorby?

A. It was not an interview, just a brief meeting of introduction.

Q. What else transpired during your visit in Denver at that time?

A. Sometime shortly after having met Mr. Sorby, I asked Captain Cramp if there was anything else he desired me to do. The possibility of taking a flight physical was mentioned. However, he said it would not be necessary until further decisions had been made. I wouldn't like to offer that as a quote of Captain Cramp, but he said "Just forget about taking a physical until later", I should put it that way. And on this occasion, then, I asked Captain Cramp if there [fol. 240] was anything further that I should do or that he wanted me to do in connection with my processing. He

said there was nothing else and I could return to Lansing. So I believe it was on the night of that same day that I did leave Denver, returning to Lansing, feeling that I had performed satisfactory in all the things that had been required of me and that I would be notified within ten days of that date, the 26th of June, 1937.

Q. Did you finally receive a notice as to their decision?

A. Finally I did.

Q. And when was that?

A. I believe I should refer to my initial letter of contact if we have a copy available. I don't remember the date offhand.

Q. The date wouldn't be so important. It was within 10, 15, 20 days?

A. Within 20 days, I believe, not within the 10 as had been offered by Captain Cramp.

Q. And what was the decision that you received?

A. I should—this is a little lengthy in detail. I would like to explain it if I may. I had expected that I would receive notification from Continental Air Lines concerning my application at my home address in Lansing, Michigan, which was given at that time as being 913 Napp Street, Lansing, Michigan, and it was written on my application form while I was in Denver in June. During the 10-day period subsequent to June 26 I had received no notification [fol. 241] from Continental Air Lines, no communication of any kind, and even several days past the tenth day I had received no notification from Continental concerning my application. So I called Mr.—I don't remember if I placed the call for Mr. Bell or not, but I did talk to Mr. Bell in Denver by long distance from Lansing and inquired about my application, and asking him what his company's decision had been. Mr. Bell informed me at that time that to his knowledge a telegram had been sent to me at my Arkansas address, giving the information which is available to us here in one of these, I think it would be another telegram that we have. It said that "We regret to inform you—".

Mr. McClearn: Excuse me. We have the telegram here.

Mr. Sayers: I think we will wait just a moment and have this marked.

Chairman Miller: That is No. 7.

(Complainant's Exhibit No. 7 was marked for identification.)

By Mr. Sayers:

Q. Mr. Green, I will ask you to look at Complainant's Exhibit No. 7 and tell the Commission what it is.

A. This is a telegram from Mr. Bell representing his company, Continental Air Lines, notifying me of his company's action in regard to my application for employment.

Mr. Sayers: We would like to offer Complainant's Ex-
[fol. 242] hibit 7 in evidence.

Mr. McClearn: We have no objection to the telegram. I note that there is certain writing on there at the bottom, which perhaps is not properly considered by the Commission.

Chairman Miller: Yes, I think that can be disregarded.

The Witness: I am sorry, may I ask you to repeat on that? I didn't hear that statement.

Mr. McClearn: There is certain writing at the bottom of the telegram apparently by you which is not properly before the Commission.

Chairman Miller: Explain that.

The Witness: I admit that this is my writing and I understand your objection.

By Mr. Sayers:

Q. Mr. Green, I will ask you to examine Complainant's Exhibit 7 and read it to the Commission, if you will, please.

A. Telegram from Denver, Colorado, to Marlon D. Green, 913 Nipp Street, Lansing, Michigan: "Pursuant our telephone conversation following is copy of wire sent you last Friday at your permanent address 734 South Smith Avenue, El Dorado, Arkansas. Regret you were not selected for next copilot class. H. W. Bell, Jr., Director of Personnel, Continental Air Lines, Inc."

That is dated July 8, 2:06 p.m., 1957, Mountain Standard Time, I would presume.

[fol. 243] Chairman Miller: That will be admitted. No objection?

Mr. McClearn: No objection.

(Complainant's Exhibit No. 7 was received in evidence.)

The Witness: I would like to point out further, if I may, that to date I have no knowledge—I have inquired of my parents as to whether they received the telegram referred to and they admit that they have not received any such telegram for me. And I would like to further point out for the record that they have had an admirable history in relaying mail and other documents which they did receive. So I do not know where the telegram, which I understand has honestly left Continental's office, I do not know where it went or where it may be today. I know that I have not received it. My parents tell me they did not receive it.

Mr. White: How did they get this address, 734 South Smith Avenue?

The Witness: That is listed on my application form which Continental has, which was listed as my home address, as distinguished from my current address at the time, which should be 913 Nipp as shown on the telegram.

By Mr. Sayers:

Q. I would like to ask you whether you had any conferences with anyone other than Mr. Cramp here on this particular occasion?

A. There was nothing which I would designate as having been a conference. I talked to numerous other people of the [fol. 244] Company who were incidental to my being processed. I spent a few minutes chatting with the link instructor and several other people who worked on the line. Some of the other pilots who happened to appear in Captain Cramp's office during the day were there, and Mr. Sorby, as I mentioned before, in the cafeteria. But there was nobody to whom I had been referred for a formal interview or formal test of any kind. So, for the purpose of my being here, to my knowledge, Captain Cramp was the only person to whom I was responsible.

Q. Did you see anyone else who was here on a similar application as yours?

A. Yes. I met a young gentleman whom I refer to in my initial letter to the Commission as being a Mr. Bryant. He is the only one of two other applicants whom I happen to know by name. I assume that I have his name right. Mr. Bryant and the other gentleman whose name I do not know were appearing at Captain Cramp's office for the purpose of being interviewed for the job openings which had been discussed, and on the morning of the 26th, prior to my flying with Captain Cramp, these two gentlemen went together with Captain Cramp in the same airplane for the purpose of flight check, and on one occasion, I don't remember if it was the 25th or 26th, I happened to be chatting with Mr. Bryant, and as I think normal under these circumstances, we were discussing our mutual qualifications or our pilot history. He informed me that—

[fol. 245] Mr. McClearn: I wonder if it would be appropriate to object to that, Mr. Chairman.

Chairman Miller: I think so. I think the rules say we should be liberal, but it is hearsay unless it was in the presence of Captain Cramp.

The Witness: No, it was not in the presence of any other person.

Chairman Miller: I don't think it is admissible.

By Mr. Sayers:

Q. During your visit with Captain Cramp was he unkind or unpleasant at any time with you, Mr. Green?

A. Within the last 20 minutes I have had the occasion to speak to Captain Cramp and our rapport during this meeting a few minutes ago was ideal and identical to the rapport which existed on the day or days that I was here in June of 1956. I would designate his conduct as being gentlemanly, most respectful and kind.

Q. You said 1956.

A. Pardon me, 1957, I would like to correct that. In fact, if I may sum it up, I would say I have to admire Captain Cramp for his reception of me.

Q. What caused you, Mr. Green, to feel that you were not hired because you were a Negro?

A. I would call it, well, I guess we must call it a feeling, but it is based on my knowledge as a Negro that Negro [fol. 246] pilots have not been welcomed by commercial airlines.

Mr. McClearn: Excuse me, Mr. Green. I don't mean to be objectionable. I do submit this is not the type of facts with which the Commission should be concerned.

Chairman Miller: I think you are expressing now your own personal conclusions.

The Witness: That's correct.

Chairman Miller: I think the Commission would have to be bound by the facts. The Commission can draw the conclusions from the evidence and the facts as they are developed. I mean you are speaking now of the subjective attitude and subjective reaction which I think would not be admissible. I mean the Commission certainly from its own knowledge of these things would also have some comprehension of that, but we have to be guided solely by the facts.

Mr. Sayers: Perhaps I can reframe the question.

By Mr. Sayers:

Q. Mr. Green, did anything happen on your trip that would cause you to feel that you had been discriminated against?

A. Nothing which transpired during my time here in Denver.

Q. Did anything transpire after you left Denver that caused you to feel that this particular company was discriminating against you?

A. Well, I should like to retract here for a bit. The [fol. 247] application form—this is hearsay again, I am probably sure it would not be admissible. It is my opinion that pictures on application forms have been used adversely against Negro pilots.

Chairman Miller: You said your opinion. Do you know? Do you know it to be fact rather than its being your opinion?

The Witness: That Negro pilots have been refused? Yes, I do know that as a fact. I could cite the case of Capitol Air Lines.

Chairman Miller: Well, now, we must tie it in with this particular employment situation.

Mr. Sayers: I think so. I thought perhaps he could give us some definite act that had caused him to feel that he had been discriminated against. That is what I am asking.

Chairman Miller: If he can, as far as the relationship with the Respondent here is concerned.

A. Well, my situation as a pilot, my experience is the fact which leads me to believe that something has transpired in my application process which is prejudicial toward myself.

Chairman Miller: Well, that, again, is your own opinion and your own inference, and what you should be testifying to are specific facts, what took place after the flight, any subsequent facts bearing upon the relationship between you and Continental or any of their agents.

[fol. 248] A. There is no such evidence available to me. My only evidence is that I was refused employment with no reason given. Pardon me, I would like to modify that. I was not hired with no reason given.

Q. That caused you to feel that you had been discriminated against, did it?

A. Yes, it did.

Q. And you followed that by the filing of a complaint against Continental Air Lines?

A. Right.

Mr. White: I would like to ask him a question. I might disagree with some of these people whether it is admissible or not, but for my own information, in talking to this other pilot, Bryant, did he indicate to you that he had an appointment to talk to some other personnel in the personnel department for further interviews?

The Witness: Beyond what we were experiencing at the time?

Mr. White: Beyond Captain Cramp there, did he tell you that he was interviewed by anyone else?

The Witness: No, he did not.

Mr. White: One other thing. When you were discussing routes, was there anything brought out there that he felt that perhaps flying into different towns or something like that, that that wouldn't be in the best interest of the airline [fol. 249] to have a Negro flying these different routes?

The Witness: I gathered no such insinuation from Captain Cramp's conversation. There have been inferences to the subject earlier in the hearing.

Mr. McClearn: I am sorry, I don't understand.

The Witness: There have been inferences to this matter earlier in the hearing, particularly Mr. Westfeldt's comment regarding uniformity of circumstances between the carriers.

Mr. Westfeldt: I think just to keep the record straight on that, I was making a legal argument related to jurisdiction and constitutionality of the law under the circumstances, which has nothing to do personally, and I didn't mean to raise any particular inference as far as you were concerned.

The Witness: No, it could be taken generally, not to myself particularly, I am sure of that.

Chairman Miller: As I understand it, Mr. Westfeldt's argument was strictly on the law, on the question of jurisdiction.

The Witness: Yes.

Mr. Sayers: I believe that's all we have right now.

Chairman Miller: Let me ask, Mr. Green, do you know of any facts which developed subsequent to your flight with respect to the other applicants, what happened to them?

The Witness: No, I have no knowledge.

[fol. 250] Chairman Miller: No knowledge at all?

The Witness: No, sir.

Chairman Miller: You may inquire.

Cross examination.

By Mr. McClearn:

Q. Mr. Green, as I understand your testimony, as far as you know you were treated at Continental, when you were here, the same as all other applicants, is that correct?

A. To my knowledge, that's correct.

Q. And there were other applicants here at the same time you were here?

A. Two others.

Q. They were in Mr. Cramp's office at the same time you were that first day, were they?

A. I don't think we were ever in the office together but we were in the hangar together at the same time.

Q. Now, would you tell us when you filed your formal complaint with this Commission against Continental Air Lines?

A. The formal complaint date I believe is August 13.

Chairman Miller: It was acknowledged on August 13. Do you know when this was filed?

Mr. McClearn: About August 13 of 1957.

The Witness: That is when it was witnessed by the Notary.

Q. Filed about the same time.

A. Mailed the same day.

[fol. 251] Q. I see. You didn't come to Denver to file the complaint or discuss the matter with the Commission?

A. No, I didn't.

Q. Did you subsequent to receiving the telegram, which is Exhibit No. 7, again contact Continental Air Lines?

A. Did I contact Continental Air Lines?

Q. Yes.

A. Subsequent to receipt of this telegram?

Q. Yes.

A. May I see that. No, there was no contact subsequent to receipt of this telegram.

Q. You didn't make any effort to find out if your application was still pending or what disposition had been made of it?

A. That was Mr. Bell's information to me. I am still on the list as being a qualified pilot for consideration.

Q. I see.

A. That was mentioned in the telephone conversation.

Q. Mr. Bell told you that?

A. Yes.

Q. Now, it is also true, is it not, Mr. Green, that in the summer of 1957 you filed a number of complaints against private employers?

A. Private employers?

Mr. Sayers: I would object to that, if I may, please, [fol. 252] on the theory it doesn't have anything to do with this particular case.

Chairman Miller: I think that is a good objection.

By Mr. McClearn:

Q. The other applicants who were at Continental's office the same time you were, were they white or colored, Mr. Green?

A. They were both white, to my knowledge.

Mr. McClearn: I think that's all we have, Mr. Chairman.

Chairman Miller: Are there any further questions by members of the Commission?

By Mr. Manzanares:

Q. I would like to ask, Mr. Green, while you were here did either Mr. Cramp or anyone else connected with Continental Air Lines inform you as to their procedure of hiring following your check flights, and so forth? Specifically, did they say, "You will be placed on a list and we will notify you"? Did they make the information available to you as to what procedure they follow after the check flights?

A. No, there was no information made known to me as to what particular items Captain Cramp or the responsible person would make their decision on. I was informed that if I were selected—this was my understanding, anyway—that if I were selected I would be called back to Denver to commence training on July 15.

[fol. 253] Q. Or a pilot school or something of the sort?

A. That's correct, a 30-day training period which I think is standard with the company.

Q. But you were not informed that it would be important as to how high a rating, let us say, you received in the check flights or anything of the sort, you weren't told that?

A. For myself I did not feel that would be a pertinent inquiry because I feel so long as Captain Cramp indicates

fairness, that I need not ask by what standards he judges me so long as I am accepted or rejected fairly.

Mr. Manzanares: That's all.

Chairman Miller: Any other questions?

By Chairman Miller:

Q. Have you any knowledge at all, Mr. Green, of what happened to the group who took the tests at the time you did?

A. I have no knowledge. I am very interested in that.

Chairman Miller: I think that's all.

Mr. Manzanares: Excuse me, I will have to go back. I would like to ask one I forgot here.

By Mr. Manzanares:

Q. You indicated that Captain Cramp was satisfied with your check-out flights, link trainer and otherwise. In what way did he indicate his satisfaction, did he tell you straight out that everything was all right, or did he just seem satisfied?

[fol. 254] A. Concerning the link check, I do remember that he made some expression, I could not quote his words, some expression of satisfaction when he reviewed the report or chart which had been handed to him by the link instructor. But subsequent to the flight check I could not say with any degree of accuracy as to whether he gave me a particular word of satisfaction. However, judging reasonably the rapport that existed between Captain Cramp and myself there was, to my knowledge, no other conclusion to be drawn from his conduct.

Q. That is what I am trying to find out. After the flight check he did not indicate to you in any way—let us put it this way—that he was not satisfied with your performance in the plane?

A. Yes. I would express it myself that his attitude indicated satisfaction. I cannot say now with any degree of accuracy that he gave any words supporting that opinion mine.

Q. He didn't give you any indication that he was dissatisfied, either?

A. Of course not.

Mr. McClearn: May I ask one or two more?

Chairman Miller: Surely.

By Mr. McClearn:

Q. I gather that Mr. Cramp's attitude after the flight check was essentially noncommittal, would that be accurate?

A. Well, he didn't—it was not the matter under consideration as to whether I had been accepted or not, so he could not be committal Yes or No about that.

Q. No, noncommittal about how you flew the airplane.

A. No, I did not draw that conclusion from his behavior.

Q. Well, I am more interested in what he said. He didn't commit himself as to how you did?

A. No, he did not commit himself. As I say, I base this on my judgment of his behavior and mine, the rapport which existed between the two of us. My conclusion from that was that he was well satisfied with my performance on the plane.

Q. One or two other points I would like to clear up. You testified, I believe, that you were requested to supply a photo by Continental Air Lines. Were you specifically requested by a person to supply a photo, or was that just a request that was contained on the application form?

A. It was contained in the application form. There was no other verbal request on anybody's part.

Q. Now, you also testified that Captain Cramp said he would notify you within 10 days. Do you recall more specifically the substance of that conversation?

A. Relating to his offer of 10 days?

Q. He didn't say, for example, on the 26th of June that "You will hear from me by July the 6th"?

A. No, he didn't say "me". I am quite sure that his expression was "You will hear from us within 10 days." And [fol. 256] I would like to say, as I recall the expression, it was within 10 days, and not about 10 days or so.

Q. You testified that several days went past the 10-day period. Having examined the telegram, I am sure that you would now say that no more than 2 days had gone past.

A. That's correct, as I believe I stated, yes, on the 9th of July I had heard nothing from Continental so I called Denver by telephone and spoke to Mr. Bell, the personnel manager—I am quoting from a letter here, the initial contact letter to the Commission—"and spoke with Mr. Bell, the Personnel Manager, who said that a telegram had been sent to my parents' home in Arkansas. This, in spite of the fact that my present address was on file with Continental."

Q. Well, I think your memory is sufficient.

A. Yes. This was a total of, let's say June—13 days, wouldn't it be?

Q. If it were the 9th.

A. Yes, the 9th of July is the day I called Mr. Bell. I think that's accurate.

Mr. McClearn: Nothing further, Mr. Chairman.

Chairman Miller: I think that's all. Just a moment.

Mr. McClearn: Let the record show I am handing to Mr. Green Complainant's Exhibit 7, Western Union telegram which bears Western Union date stamp of 2:06 p.m. [fol. 257] on July 8, and ask him if it refreshes his recollection as to when he talked to Mr. Bell.

The Witness: On the 9th of July, which is a Tuesday, I would have to delay answering this question until I can check my telephone records which will show the date of that telephone call, as I would rather believe this information on the telegram, that the 8th is the correct date.

(Witness excused.)

Mr. Sayers: Mr. Chapman please.

ROY M. CHAPMAN, called as a witness on behalf of the Complainant, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sayers:

Q. Mr. Chapman, will you state your name and position, please?

A. Roy M. Chapman, C-h-a-p-m-a-n, Coordinator of Fair Employment Practices for the Colorado Anti-Discrimination Commission.

Q. And how long have you been such Coordinator?

A. I was appointed on July 31, 1951.

Q. And you have been continuously engaged in that work since that time, have you?

A. Yes.

Q. When did you first learn that Mr. Green had applied to Continental Air Lines for a job as pilot?

[fol. 258] A. From a letter from Mr. Green dated August 3, 1957.

Q. Do you have that letter?

A. It is in our file and the received date is marked on there, too.

Q. Do you remember what that letter said, what the gist of the letter was, Mr. Chapman?

A. Essentially it was a description of Mr. Green's experiences when in Denver being interviewed for a job as a pilot, and in the letter he complained that he had been refused employment.

Mr. McClearn: Excuse me. I think the contents of the letter would be inadmissible.

Chairman Miller: Yes.

Mr. Sayers: I didn't want to get Mr. Chapman to identify it right now.

Mr. McClearn: I will stipulate to the authenticity of the letter, but I would object to the introduction of the letter on the ground that Mr. Green is present and personally has testified and that anything contained in the letter is secondary evidence.

Chairman Miller: I think that is true. I think the letter is admissible to the extent that a letter was received from Mr. Green but any self-serving statements would not be admissible as such, except insofar as he has testified to them.

Mr. McClearn: I think he has testified that a letter was [fol. 259] received and a complaint was made. Further information than that I think would be inadmissible.

Chairman Miller: Is there anything further in the letter that has not been testified to, Mr. Sayers?

Mr. Sayers: I don't believe so.

Chairman Miller: If not, I think, as Mr. McClearn said, we can stipulate to the effect that a letter was sent to the Commission.

The Witness: What date was it received?

Mr. Sayers: 8-8-57.

The Witness: August 8, '57. That is our office stamp, receipt stamp.

Chairman Miller: Then let the record show that a letter was received from the Complainant on August 8, 1957, addressed to the Fair Employment Practices Commission in Denver.

Mr. McClearn: So stipulated.

By Mr. Sayers:

Q. After receiving the letter from Mr. Green what did you do, Mr. Chapman?

A. I replied to the letter and enclosed what we call a preliminary complaint interview form for Mr. Green to fill out so that we would have some knowledge or some specific knowledge of his qualifications and his background. I, also, upon the basis of the information furnished in the letter of [fol. 260] August 3rd, Mr. Green's letter of August 3rd, I prepared a complaint in the proper form, enclosed that with a preliminary complaint interview form and also a letter to Mr. Green, explaining the purpose of the interview form and asking him to either sign the complaint, submit it if it covered the subject, or to make such corrections as were necessary and then to sign it, have it verified, and return it if he cared to file a complaint with the Commission.

Q. After the complaint was filed what did you then do?

A. I proceeded then to make some investigations as to Mr. Green's qualifications and followed up on his references that he had given, three different references from people who knew him, character references, and from people from various parts of the United States. I also set up an engagement to talk to Mr. Bell concerning the matter, who is Personnel Director of the Continental Air Lines.

Q. Will you tell us of your conference with Mr. Bell?

Mr. McClearn: Before Mr. Chapman testifies in answer to that question, I would like to make an objection, Mr. Chairman. It is our position that conferences between Mr. Chapman or members of his staff and representatives of the Respondent are not admissible at this hearing, as having been held in attempts to reach a compromise or settlement of a dispute between Mr. Green and the Respondent. I could make a further argument if you would like me to. There was correspondence on this point between the Respondent and Mr. Chapman in support of my argument, and I would like to have that. Perhaps I could make a preliminary inquiry of Mr. Chapman at this time.

Chairman Miller: All right. My own recollection of the law is, what we call the examining or investigating official may testify.

Mr. McClearn: I think it does say that he shall not do something except as a witness, if I recall the words.

Mr. Sayers: Section 6, Sub-section 7.

Chairman Miller: Section 6, Sub-section 7?

Mr. Sayers: Yes.

Chairman Miller: "The case in support of such complaint shall be presented at the hearing by one of the Commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the Commission in such case."

Mr. McClearn: I think it would—excuse me, I didn't mean to interrupt.

Chairman Miller: On the basis of that he would appear to be competent to testify as a witness.

Mr. McClearn: That inference could be drawn. I would like to lay this further foundation, then I will make my argument as brief as I can.

Chairman Miller: All right.

[fol. 262] By Mr. McClearn:

Q. Mr. Chapman, in the latter part of 1957 did you receive a letter from Continental Air Lines with reference to a proposed conference with representatives of Conti-

mental and asking or requesting that the conference and prior conferences be considered as having taken place by way of compromise or settlement and not be used in subsequent proceedings if any were to be held?

A. That was perhaps in December?

Q. Perhaps. I think it was.

A. After we had held two conferences.

Q. Did you receive such a letter?

A. Yes.

Q. Do you have a copy of that letter in your files?

A. Yes.

Q. May I have it, please?

Chairman Miller: Did you say after—

The Witness: After October 31. It was probably in December, might have been in November because we tried to get together, then we had to make some postponements. It might have been dated November.

Mr. McClearn: Mr. Binkley, may we stipulate that that letter, which I would like to have marked—perhaps we better do that first.

(Respondent's Exhibit No. 1 was marked for identification [fol. 263].)

The Witness: I should like to have that letter read.

Mr. McClearn: I will be glad to read it. I am reading from a letter to Mr. Roy M. Chapman, Coordinator, December 23, 1957—with your permission?

Chairman Miller: Yes.

Mr. McClearn: "Dear Mr. Chapman: We have your letter of December 16, 1957, scheduling a conference in your office on January 7, 1958, with respect to the complaint filed by Marlon D. Green. As previously advised, we will be glad to discuss this matter with the Commission at that time.

"There is, however, one point which we would like to have clarified prior to the meeting. We understand that the purpose of this meeting is to informally consider the positions of the parties in an effort to settle or compromise any differences by means of conference, conciliation and negotiation. For such a meeting to be of any value, the

persons present should engage in full and free discussion. In order that such a discussion may take place, we believe two things are necessary: First, that no stenographic or other recording of the discussion should be made; and second, it should be understood that nothing said by any of the persons present would be used in any way in any formal proceeding which may follow. In addition, certain notes were taken at our earlier meetings and it should be understood that those discussions took place in a conciliation [fol. 264] effort and will not be used in any subsequent proceeding.

"Since Mr. Green has filed a formal complaint with the Commission, it seems fairly clear that he has commenced legal action against Continental Air Lines, and it is for that reason we want to be sure we understand the purpose and effect of our meeting with the Commission. We do hope the proposed meeting can be held in the informal atmosphere suggested above, and that we can arrange for a satisfactory disposition of the matter. We intend to approach the meeting in that light and to use our best efforts to arrive at a solution acceptable to all concerned.

"Will you please confirm our understanding that the meeting will be conducted as suggested above?

"Yours very truly, Harrold W. Bell, Jr., Director of Personnel."

May it be stipulated, Mr. Binkley, that this is the letter which was received by your office, and Mr. Chapman's?

Mr. Binkley: Yes.

Mr. McClearn: May it be received in evidence? We offer it at this time.

Chairman Miller: Yes. That relates of course—I beg your pardon.

Mr. Manzanares: Was there any agreement to that, did Mr. Chapman agree to the stipulations contained in the letter?

[fol. 265] Mr. McClearn: I would like to bring that out, if I may.

By Mr. McClearn:

Q. Did you receive that letter, Mr. Chapman?

A. Yes.

Q. What did you do upon receiving the letter?

A. I replied to it.

Q. What did you reply?

A. I think it would be quicker just to read my reply.

Q. Did you understand the contents of the letter?

A. I thought I did.

Q. Did you understand from the letter that Continental Air Lines desired to have your discussions with them treated as confidential?

A. I don't know how to answer that. It is my understanding, however, that if this should ever come to a hearing, it was my understanding at that time, and still is, that I could testify to pertinent things which would substantiate our finding of probable cause for complaint.

Q. Notwithstanding the request contained in that letter?

A. As long as we didn't divulge anything that was of a business nature of the Continental Air Lines.

Q. In other words, you thought that Continental was interested in not revealing something in the nature of trade secrets or something like that?

[fol. 266] A. Information which was not generally given to the public.

Q. Now, in your discussions with Mr. Bell, it is true, is it not, that you told him those discussions were taking place in confidence?

A. Let's read my reply.

Q. I am not talking about your reply right now. I am talking about one of your earlier meetings with him. Didn't you tell him that?

A. In a discussion of that sort it was reasonable to expect that there would be some things said about business affairs of the company that shouldn't be admitted to the record in a hearing but which had indirect bearing upon this case.

Q. I am not sure I understand you, sir. Are you suggesting that you felt you could disclose matters detrimental to the company which would relate to Mr. Green's allegations but not outside of Mr. Green's allegations?

A. I thought I could testify to things that pertained to Mr. Green's allegations.

Q. Regardless of whether they were detrimental to the company or not?

A. Yes.

Q. Now, it is further true, is it not, Mr. Chapman, that you have a duty under the statute in the preliminary stages of such a hearing or such a proceeding to attempt to con-[fol. 267] ciliate, persuade and negotiate with the persons involved, both Complainant and Respondent?

A. The first step is to try to gather information from both, on behalf of the Complainant and on behalf of the Respondent, upon which he can make a determination as to whether or not there is probable cause for crediting the allegation. It is our job—it is my job as Coordinator to act in a quasi judicial position and not to take sides with either one. I gather facts.

Q. I appreciate that. But you do have the statutory duty to attempt to resolve matters such as this.

A. That is the next step. Then if probable cause is determined, then it is my duty to try to settle the matter by conciliation, persuasion and conference.

Q. And for that purpose you have a duty, do you not, to get together with the parties, particularly the Respondent?

A. That's right.

Q. And to discuss with them the complaint?

A. That's right.

Q. And attempt to persuade them to take a course of action which will solve the problem?

A. That's right.

Q. And you did so in this case?

A. Yes, sir.

Mr. McClearn: Do you want to have that marked, Mr. [fol. 268] Sayers?

Mr. Sayers: Yes.

Chairman Miller: Respondent's?

Mr. McClearn: I think that would be the Complainant's.

Chairman Miller: Complainant's Exhibit No. 8.

(Complainant's Exhibit No. 8 was marked for identification.)

By Mr. McClearn:

Q. Now, Mr. Chapman, I have here a copy of letter dated December 27, 1957, to Mr. Harrold W. Bell, Director of Personnel. I will read it if that is all right.

A. Yes.

Mr. McClearn: "Dear Mr. Bell: This acknowledges your letter of December 23, 1957 concerning our scheduled conciliation meeting on the Marlon D. Green Complaint.

"I concur with your request that this meeting shall be completely informal and unrecorded. I sincerely hope that we can arrive at a satisfactory settlement of the Complaint at this meeting.

"The Commission has designated me to represent it at the January 7th meeting; therefore, none of the Commissioners will be present.

"Very truly yours, Roy M. Chapman, Coordinator."

Would you care to stipulate that this was received?

The Witness: Yes, it was sent.

[fol. 269] Mr. McClearn: You stipulate you received it?

The Witness: I suppose Continental received it.

Mr. McClearn: Do you want to offer it?

Mr. Sayers: Yes. We want to offer in evidence Complainant's Exhibit 8, as a response to the letter in question.

Chairman Miller: Yes. You have offered this Respondent's Exhibit 1?

Mr. McClearn: Yes, sir.

Chairman Miller: If there is no objection, these will both be admitted.

(Respondent's Exhibit No. 1 and Complainant's Exhibit No. 8 were received in evidence.)

Mr. McClearn: I have just one or two questions of Mr. Chapman, then I will be through.

By Mr. McClearn:

Q. Mr. Chapman, did you thereafter hold a meeting with representatives of the Continental Air Lines?

A. Yes.

Q. Did you at any time during your conversation with any representative of Continental in connection with this matter advise them that you would be prepared or that you would testify at any hearing if held as to the conversations?

A. No, sir, and I don't recall ever having expressed that.

Q. But you do recall having expressed the statement that the matter was to be treated as confidential?

[fol. 270] A. In my reply there it says that I concur that there will be no recording of the conference.

Q. I am not talking about your answer to the letter. I am talking about your conversations with Mr. Bell prior to this exchange of correspondence.

A. Prior to that?

Q. Did you then tell him that the matter was to be treated as confidential?

A. Verbally, you mean in conversation?

Q. Yes, or state it however you like. I don't want to put words in your mouth.

A. Well, that would help. I can't recall any conversation to that effect.

Mr. McClearn: With your permission, I will state my objection, which is two-fold.

Chairman Miller: All right, sir.

Mr. McClearn: I have already stated my basic objection, which is that testimony from Mr. Chapman as to conferences with Continental representatives is inadmissible because the conversations took place in the course of a compromise or settlement of an existing dispute. The complaint in this case was issued on or about August 13, 1957, and these conferences took place thereafter. Mr. Chapman has a statutory duty to attempt to bring the parties after the dispute has arisen and after the complaint has been filed together, and in an informal atmosphere resolve, negotiate, [fol. 271] conciliate and persuade, and this he attempted to do as was proper.

Now, it is clearly contemplated as I read the Act, that this conciliation process to be effective must be treated confidentially, and that obviously if a Respondent or its representatives knows that any statement it makes can, if detrimental, be used against it, the purpose of the conciliation feature of the statute is of no effect because nobody will talk to the Commission or its representatives, and certainly in addition to that fundamental policy consideration, there is here the explicit expression by Continental's representatives prior to one meeting, asking not only, or seeking to clarify their understanding not only that the subsequent meeting but that the past meetings will also be treated in that same light so that the very purpose of this statute can be effectuated, and I submit to the Commission that unless that policy is adopted by it, your conciliation feature or phase of the statute will be meaningless and there will be no point in doing it.

The Witness: Would it be proper for me to ask a question?

Chairman Miller: Just a minute. I would like to discuss this a minute.

(Conference of Commissioners held outside the hearing room.)

Chairman Miller: The members of the Commission here [fol. 272] have examined Respondent's Exhibit 1 and the Complainant's Exhibit No. 8, together with what they consider to be the pertinent provisions of the law. Respondent's Exhibit 1 is a letter dated December 23, 1957, relating to a proposed conference between Roy Chapman, Coordinator and Harrold W. Bell, Director of Personnel of the Respondent, and requests that, first, no stenographic or other recording of the proceeding be made; second, it should be understood that anything said by any of the persons present would not be used in any way in any formal proceedings which may follow.

Mr. Chapman in his letter, Complainant's Exhibit 8, answers: "I concur with your request that this meeting shall be completely informal and unrecorded. I sincerely hope that we can arrive at a satisfactory settlement of the Complaint at this meeting."

This correspondence would forbid the introduction of any evidence relating to the meeting of January 7. However, the statute provides for the procedure and the duty of the Coordinator upon the filing of a complaint or even prior thereto; Section 6, Subsection 3: "After the filing of a complaint, the coordinator or commissioner shall make, with the assistance of the staff, a prompt investigation thereof, and if such investigating official shall determine that probable cause exists for crediting the allegations of the complaint * * *".

Subsection 7 of Section 6 provides that "The case in [fol. 273] support of such complaint shall be presented at the hearing by one of the Commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the Commission in such case."

Sub-section 7 contains the important provision that the investigating official may participate in the hearing as a witness. His duties seem to be two-fold. First, he has the duty of investigating, and then there are duties imposed upon him to attempt to eliminate such discriminatory or unfair employment practice by conference, conciliation and persuasion.

The Commission is of the opinion that these provisions of the statute permit the investigating official to testify as to facts relating to his investigation, not facts relating to conciliation. Although there may be a question as to whether or not he may not even testify as to those facts, at any rate, in connection with the objection that has been raised the Commission is of the opinion that no testimony is admissible with respect to the January 7 meeting but that testimony is admissible so far as the witness is concerned with respect solely to facts developed on his investigation, eliminating any evidence relating to efforts of conciliation or compromise. I hope that is clear.

Mr. McClearn: The ruling of the Commission is very clear. The line between the two is not quite so clear to me. [fol. 274] Chairman Miller: I agree with you it may take a differentiation, but yet to read the statute, which is, of course, unique, and having in mind, too, the background on

compromises, of course, the statute doesn't say "compromise", it says "conciliation", and efforts at elimination of an alleged practice, conciliation and persuasion. It does not speak of compromise of a disputed claim which normally would not be admissible, but it seems clear that, at least to the members of the Commission now, that the facts relating to the investigation by the investigating official are admissible. Otherwise, it would be pure surplusage to insert in the Act that the investigating official shall not participate in the hearing except as a witness.

Now, under the Act a member of the Commission may be an investigating official as well as the Coordinator or a member of the staff. In this case the Coordinator was designated as the investigating official and it is a little bit hazy to determine what he would be testifying to except as a witness if it didn't relate to facts developed in the investigation.

Mr. McClearn: I might state that our position with respect to that, Mr. Chairman, is that we don't challenge his competence to appear as a witness, for example, to testify to the fact that the complaint was received and matters of that nature which he has already testified about. Our objection is solely to his conferences with the Respondent [fols. 275-6] in an endeavor to resolve, conciliate or compromise, as you have it, the dispute.

Chairman Miller: Yes. As I say, that may be a little difficult to differentiate, but I think we'll have to take each question and answer as they develop and rule upon them as to whether or not this is an investigation or this is persuasion or conciliation in the words of the statute. It may sound like hair-splitting, yet that's the way we read the Act.

Mr. Westfeldt: If the Commission please, I am going to leave and Mr. McClearn is going to continue for Continental Air Lines. The only thing that I might have to add to that, that with respect to procedure before administrative bodies, to whatever extent the procedures before the National Labor Relations Board can be considered as a parallel in unfair labor practice cases, the Board and its staff are very, very careful that their field examiners

do not testify under any circumstances in hearings on unfair labor complaints, and I think that it is analogous. Of course, it is not exactly the same, but I think that on that basis the objection asserted by counsel in this area of conciliation and negotiation and persuasion should stand, and I assume that the Commission's ruling is in accord with that objection.

Chairman Miller: Yes, it is. Having in mind, too, other procedures before other administrative bodies, not only the National Labor Relations Board, the proceedings have been subject to considerable abuse. People are sitting in [fol. 277] investigative and judicial capacities as well, and I think there have been remedial Acts designed to correct that situation. But here it is the Commission's ruling that anything relating to the facts developed by investigation, even though developed by the Commission's investigator, are admissible.

Mr. Westfeldt: I have nothing further to say.

Mr. McClearn: Mr. Chairman, just as a matter of procedure as a part of our case we are prepared to have testimony from our people as to what Mr. Chapman said. Now, I appreciate that the Commission has ruled and I am not asking that it change its ruling. Do you see any reason why we should present that testimony at this time other than—

Chairman Miller: As a matter of procedure, if you would prefer, we can do it this way. Assume we reserve our ruling on Mr. Chapman's testimony and proceed with whatever other evidence there may be, and then you present your witnesses and do it that way, too.

Mr. McClearn: That would be fine.

Chairman Miller: If you would rather do that.

Mr. McClearn: I am prepared to do it now or at the Commission's convenience.

Chairman Miller: Why don't we do that now, if that is agreeable to you, Mr. Sayers?

Mr. Sayers: That is all right with me.

Chairman Miller: Let Mr. McClearn present his witnesses.

[fol. 278] Mr. Sayers: Just as well clear it up.

Mr. McClearn: All right, and it is understood this testimony relates just to this point.

Chairman Miller: Yes.

(Witness temporarily excused.)

HARROLD W. BELL, JR., called as a witness on behalf of the Respondent, was duly sworn and testified as follows:

Direct examination.

By Mr. McClearn:

Q. Would you state your name, please, and address?

A. Harrold W. Bell, Jr., 5634 Montview Boulevard.

Q. What is your occupation, Mr. Bell?

A. Vice President, Personnel, Continental Air Lines.

Q. Mr. Bell, during the months of September, October, November 1957, did you have conversations with representatives of the Colorado Anti-Discrimination Commission relative to the complaint of Marlon D. Green?

A. Yes.

Q. With whom did you have those conversations?

A. The Chairman, Mr. Chapman—

Chairman Miller: Not the Chairman.

A. Not the Chairman. Mr. Chapman, the Coordinator, and Mr. Binkley.

Q. Where did these conversations take place?

A. They took place, one, I am recalling from memory, in my office, and the other, I believe in this room.

[fol. 279] Q. Which is the office of the Commission?

A. The office of the Commission.

Q. Who was present at the first conference, if you can recall?

A. Mr. Chapman, Mr. Binkley, I was present of course, Mr. K. C. Sorby, the Employment Manager.

Q. Of Continental Air Lines?

A. Of Continental Air Lines.

Q. At that time and place what, if anything, did Mr. Chapman or Mr. Binkley say with respect to the subsequent use of your conversations with him?

A. We were given to understand that the conversations were confidential, that this was an effort to mediate, to adjust the dispute, and to resolve Mr. Green's complaint to the satisfaction of all parties.

Q. How did this specific conversation arise?

A. Mr. Chapman has a very interesting machine that takes characters, I believe, perhaps it is Braille, and I inquired if that was being transcribed in any way, it being my understanding it was a mediatory session, and was told no, just notes of one sort or another were being taken. I had no reason to believe that anything that was being taken down would be used.

I'd like to say here there was nothing of great confidence discussed that I believe would be in violation—well, not [fol. 280] violation, that couldn't be used.

Mr. Sayers: May I ask a question here, please? What date was this meeting that you speak of?

The Witness: In September, Mr. Sayers. I don't have the exact date. We have it available.

Mr. Sayers: September '57?

The Witness: September '57, yes.

By Mr. McClearn:

Q. At the beginning of your conversation with Mr. Chapman and Mr. Binkley, was the purpose of the meeting explained to you by either of them, and if so, in what manner?

A. That was an effort to resolve a complaint brought by Mr. Green to inquire as to the facts as they were available, and as I say, to try to resolve this complaint.

Q. Were you informed by either Mr. Chapman or Mr. Binkley that Mr. Green had filed a formal complaint against Continental with the Commission?

A. Mr. Chapman so informed me.

Mr. McClearn: That's all I have, Mr. Sayers.

Cross examination.

By Mr. Sayers:

Q. Was it your understanding at that time that the meeting was to be confidential?

A. Yes, Mr. Sayers.

Q. Who so indicated?

A. Mr. Chapman himself.

[fol. 281] Q. That was at the September meeting that you had that understanding?

A. Yes.

Q. What about subsequent meetings?

A. And all subsequent meetings likewise. The only other meeting I believe was held in this office in perhaps early December. I don't have that date either, perhaps you do. But the meeting was held here and it was my understanding that also was exploratory, mediatory, in an attempt to resolve the complaint, and it was a confidential meeting.

Chairman Miller: Did Mr. Chapman say at any time they were investigating this complaint?

The Witness: I am relying on memory, Mr. Miller, but it is my belief that is what he said, they were investigating, exploring the facts.

Chairman Miller: Didn't you discuss facts with him with respect to Mr. Green's capabilities?

The Witness: Yes.

Chairman Miller: Was there anything said at that time with respect to Mr. Green's either being capable or not being capable?

The Witness: Yes.

Chairman Miller: What was said with respect to his capabilities?

The Witness: That according to the flight check given [fol. 282] him—

Mr. McClearn: I wonder, Mr. Miller, if that isn't going beyond this specific inquiry. Isn't that getting into the merits of the testimony?

Chairman Miller: Well, it is getting into the questions of fact, that is true. We are having a preliminary inquiry,

that's right. I think Mr. Bell's evidence shows that it was partially investigative.

Mr. McClearn: I don't propose to make further argument. That's all the testimony I have from him.

Chairman Miller: All right.

(Witness excused.)

Chairman Miller: Mr. Bell was the only one in that respect?

Mr. McClearn: Yes, sir, that's all.

Chairman Miller: Call Mr. Chapman with respect to this conversation.

ROY M. CHAPMAN, resumed the stand, was examined and testified further as follows:

Chairman Miller: You have been sworn, Mr. Chapman. You have heard Mr. Bell's testimony with respect to the meeting which you held here. You had two meetings with him prior to December 1957. Have you heard that testimony?

The Witness: Yes, sir.

Mr. McClearn: In order to expedite the hearing, may I [f6l. 283] have a standing objection to the testimony of conversations so I need not make them each time?

Chairman Miller: You mean these conversations between Chapman and the representatives of the Respondent?

Mr. McClearn: Yes.

Chairman Miller: Yes.

Did you answer, Mr. Chapman?

The Witness: Yes, sir. I answered "Yes".

Chairman Miller: Is that statement entirely correct?

The Witness: I don't recall that at the first meeting that we had with Mr. Bell and Mr. Sorby in Mr. Bell's office that I stated that that was confidential. There were parts of it no doubt that were, that would be considered as confidential, but that was an investigation. That was the beginning. We had no grounds at that time upon which to conciliate.

Chairman Miller: Would you state whether or not you told Mr. Bell that this was an investigation?

The Witness: I can't imagine that I didn't. Ordinarily, if this is of any value, at the first meeting with the Respondent—

Chairman Miller: No, you would have to confine yourself to this particular conversation.

The Witness: I would say yes.

Chairman Miller: And did you discuss any facts relating to Mr. Green's complaint with Mr. Bell at that time?

[fol. 284] The Witness: I advised him of the allegations.

Chairman Miller: Did you say that anything said at that time would be held in confidence?

The Witness: I don't recall saying that.

Chairman Miller: I think, Mr. Sayers, you may inquire as to facts.

Mr. Sayers: As to the facts of the first meeting?

Chairman Miller: Developed by investigation.

Direct examination.

By Mr. Sayers (continued):

Q. Mr. Chapman, after the complaint was made, what did you do?

A. I made arrangements to meet Mr. Bell at his office to get the Respondent's side of the story.

Q. In that effort were you trying to find probable cause for the filing of the complaint?

A. I was trying to gather facts upon which I could base a determination of whether or not there was probable cause.

Q. Now, I would like to ask you what those facts were that you discovered. I don't know whether we can under this procedure now.

A. Well, several of the facts have already been testified to.

Chairman Miller: May I suggest, you must limit yourself, of course, only to facts relating to the Plaintiff's or the Complainant's allegations of discrimination based upon [fol. 285] his capability to be employed by the Respondent.

The Witness: I shall try to do that.

Q. First, to get started off again, at this first meeting can you give us the approximate date, Mr. Chapman?

A. It was September 10, 1957.

Q. And with whom did you confer?

A. With Mr. Harrold W. Bell, Jr., and Mr. Kenneth C. Sorby, employment manager.

Q. And in your consultation with whom did you speak, each of them or with just one of them primarily?

A. Principally with Mr. Bell.

Q. Can you tell us now, give us the gist of what occurred at that meeting, limiting it, as has been directed by our Chairman?

Chairman Miller: Only to facts relating to the Complainant's qualifications.

A. In respect to qualifications I asked Mr. Bell if Mr. Green, the Complainant, was a qualified pilot, and he answered in words very much like this, "Hell, yes, with a record like that you couldn't say he was anything but qualified."

Q. Then what developed further?

A. And then in our discussion Mr. Bell expressed three fears.

Mr. McClearn: Excuse me. Are these facts relating to qualifications?

[fol. 286] Chairman Miller: No, I don't think the fears are admissible. I think the facts related to Mr. Green—

The Witness: These statements were made in connection with Mr. Green by Mr. Bell.

Chairman Miller: All right.

A. Mr. Bell repeated—

Mr. McClearn: Well, now, I certainly don't want to be objectionable any more than I have to, but are we dealing with facts as applied to Mr. Green, or are we getting into some extraneous area having to do with the subjective feelings of some person?

Chairman Miller: No, I think we are dealing with the fact relating to the question, this issue of whether or not the Complainant was discriminated against because he said he was a Negro in this application for position as a commercial airline pilot, and I think the facts, any facts, related

to his qualifications and the Respondent's attitude toward this particular applicant for the job, which bear upon his employment or nonemployment, whatever the reason may be, whether it was because of no positions available or adverse economical conditions or anything, but the facts that Mr. Chapman was investigating.

Mr. White: I would like to ask Mr. Chapman a question.

Mr. McClearn: Let me just say that I don't see, then, if that be the case, what areas would be excluded from the [fol. 287] testimony, because—

Chairman Miller: Well, the areas of conciliation or persuasion, only those.

Mr. McClearn: It seems to me that what Continental's representatives said fall directly within that area.

Chairman Miller: No, if Continental's representative said this man is not qualified, that is one of the facts relating to the issue in this case; if Continental's representative said this man is qualified, that is a fact bearing on the issue. The next question is, if he was qualified, what fact was there which prevented his employment? He was not employed. What was the fact?

Mr. Manzanares: Mr. Chairman, are we to consider the matter of qualifications regarding employment to cover not merely the mechanical operation of a machine? It must be the area of qualification itself, I believe, as far as Continental is concerned, and I am not trying to tell them what their qualifications are, but it must cover more than the mere checkout flying time. That is what we want to get to there.

Chairman Miller: Those are the questions of fact by which we are limiting Mr. Chapman's testimony.

Mr. White: I would like to ask Mr. Chapman, was there any discussion on problems that would be involved in hiring a Negro as a pilot?

The Witness: Yes.

[fol. 288] Mr. White: Can you tell us what problems were discussed?

Mr. McClearn: When you raise the question of problems, Mr. White, I submit you are in the area of negotiation and conciliation and persuasion.

Mr. White: I think he went out there to investigate why he wasn't hired.

Mr. McClearn: I won't say any more.

Mr. White: The testimony was that he was qualified. I want to know, if he is qualified, what other problem was there and why he wasn't hired. Now, they must have discussed those problems in the investigation.

Chairman Miller: Yes, you may testify to that.

The Witness: Are you ready?

Chairman Miller: Yes.

A. During that interview on September the 10th one of the points emphasized by Mr. Bell was that there was a fear that there could be no cockpit harmony between a Negro pilot—or a White pilot and a Negro copilot, that it might lead to frictions which would become hazardous to the operation of the aircraft.

Another point of fear that was brought up was they might run into difficulties in housing a Negro at the end of a run. For instance, in Chicago or Los Angeles or some of their terminals in Texas and also in eating places, if the [fol. 289] Negro person hired insisted upon the same, and equal accommodations with the other flight personnel.

The third fear was expressed that although the company has the right to hire whomever it pleases on a one-year probationary period, that at the end of that year's period there might be difficulty in a Negro pilot's being admitted to the Air Line Pilots' Association, which is a labor union, and that since membership in the A.L.P.A. is dependent upon the rating given the applicant for membership by the pilot, that the pilots might not give him a good rating—or give a prejudicial rating, rather, and that that might bring about labor troubles.

And another point—I based my opinion of probable cause largely upon those fears, those three fears that were expressed, and also upon the fact that Mr. Green was required, or requested, rather, to enter "Negro" on the application form although it was an obsolete form. In connection with qualifications I might add this, that the question of personality characteristics and appearance were also discussed, and that there was no contention made that

Mr. Green's personality characteristics and physical appearance were against him. It was also admitted that he was within the age limit of the company and within the size limit, height and weight.

By Mr. Sayers:

Q. Can you think of any other items that should be brought to the Commission's attention?

[fol. 290] A. Under the limited circumstances I don't think of any others.

Q. It limits it very much.

Chairman Miller: Are you through, Mr. Sayers?

Mr. Sayers: I wanted to ask Mr. Chapman this question:

Q. Now, the second and third conferences that have been mentioned, were they conferences of conciliation?

A. Primarily.

Q. At this first meeting, was the policy of the company discussed?

A. Yes.

Q. And the policy of the individuals hiring, were they discussed?

A. The individuals who did the hiring, as I understand it, don't make policies. At that time I was given a copy of the Continental Air Lines' Employment Manual, which has a statement of its employment policies and its procedure in hiring.

Q. Is there anything in that Manual that would indicate discrimination of minority groups?

A. The policy statement is a very good policy.

Mr. McClearn: I wonder, if Mr. Chapman has that, if he couldn't just introduce it.

Chairman Miller: Yes, just introduce it if you have it.

[fol. 291] (Complainant's Exhibit No. 9 was marked for identification.)

Mr. Sayers: I don't know how we will have Mr. Chapman identify it.

Mr. McClearn: We will stipulate it.

Chairman Miller: Stipulate this may be read in the record.

Mr. Sayers: And those sections applicable would be Sections A and C.

Chairman Miller: Shall I read them?

The Witness: I would like to have my memory refreshed.

Chairman Miller: This is Continental Air Lines, Inc., General Policy Manual, Part 1—Employment.

"A. Employment policy. Applicants for employment will be considered solely on the basis of fitness and ability for the work as determined by such factors as character, skill, intelligence, and physical qualifications."

Then you say "C"?

"C" is "Responsibility for Selection."

The Witness: I remember what that is.

Chairman Miller: "The department head or his designated representative will select from the applicants referred to him by the employment manager the individual best suited for the position."

Mr. Sayers: We would like to offer that.

[fol. 292] Mr. McClearn: No objection.

Chairman Miller: It will be admitted.

(Complainant's Exhibit No. 9 was received in evidence.)

By Mr. Sayers:

Q. Mr. Chapman, referring to what has just been read—was there anything said at your investigative conference that would indicate that Mr. Green did not meet any of the requirements set out?

A. No. According to all the information I could gather he met everything complete.

Mr. Sayers: Do you have any questions?

Chairman Miller: No. Mr. McClearn?

Mr. Manzanares: I do. Go ahead.

Chairman Miller: Mr. McClearn.

Cross examination.

By Mr. McClearn:

Q. At the meeting on September 10, 1957, Mr. Chapman, Mr. Sorby told you, did he not, that Mr. Green was one among 14 applicants for a limited number of positions?

A. I was told that by either Mr. Bell or Mr. Sorby.

Q. And you were further told, were you not, that of the 14 applicants 4 were selected for employment?

A. Yes.

Q. And you were further told, I believe, that of those who were not hired at that time a number of reasons entered into it, as to the reasons why they were not hired at that time?

[fol. 293] A. I was told that the 4 selected were the ones that they thought they wanted more than they did the others.

Q. Now, Mr. Bell also told you at that meeting, did he not, that it had come to his attention that Mr. Green had filed a number of other lawsuits just prior to your meeting?

Mr. Sayers: We object to that.

Mr. McLearn: I am not trying to establish the fact.

Chairman Miller: No, I think that is admissible.

Mr. Sayers: Objection withdrawn.

A. Yes, sir.

Q. And when he was discussing these three fears, as you phrased them, he indicated to you, did he not, that that represented his personal opinion?

A. I don't know whether he indicated it or not, but I would agree with that, that it was his personal opinion.

Q. And Mr. Bell further at that meeting indicated to you that Continental customarily interviews a considerable number more applicants than there are positions to be filled, did he not?

A. Yes.

Q. And that it customarily does not hire a good number of people at interviews?

A. Yes.

Q. In your testimony you stated that you didn't recall [fol. 294] saying at this first meeting that the matters discussed were to be treated as confidential. Now, you don't mean to say, do you, that you couldn't have said that?

A. I could have said that, and there were some matters came up that were confidential because we had a friendly relationship and there were some off-the-record viewpoints taken.

Q. Which still exists, I hope?

A. I hope so. I might add this, it is true that I was told there were four applicants selected. I was also told that they were recruiting for some 14 or 15 pilots at that time.

Q. In September?

A. I was told that in September, that in June they thought they were going to fill 14 or 15 new positions with new pilots, and they went ahead—I was told that they went ahead in July and screened another considerable number, sixty applicants, and out of the sixty, as I recall, ten were approved for interview and two were selected, because about that time they got word that instead of fourteen or fifteen pilots to be employed there would be three or four.

Mr. McClearn: I think that's all, Mr. Chairman.

Chairman Miller: Did you have questions?

By Mr. Manzanares:

Q. I would like to ask Mr. Chapman, if in the first investigation meeting on September 10 you advised Mr. Sorby and the other gentleman that your investigation that you [fol. 295] were conducting then was necessary so that you could determine whether or not probable cause would exist for crediting the allegations of the complaint.

A. I said words to that effect, yes.

Mr. Sayers: ~~I would like to ask one other question.~~

Redirect examination.

By Mr. Sayers:

Q. Mr. Chapman, did either Mr. Bell or Mr. Sorby say they would not hire Mr. Green because he was a Negro?

A. Not on September 10.

Mr. Sayers: May I follow that with another question?

Chairman Miller: Depends on when.

Q. Mr. Chapman, was such statement generally made?

Chairman Miller: If you are relating the testimony to any conferences prior to this January meeting, I think it is proper, but I don't think you can get into that one.

Mr. Sayers: Let me rephrase my question?

Q. Mr. Chapman, were you ever told that Continental would not hire Mr. Green because he was a Negro prior to the January meeting that you had with him?

Mr. McClearn: I think it is already in the record that I have an objection to this whole line of inquiry.

Chairman Miller: Yes, sure.

A. I have no recollection of that, of what was said about that during that specific period of time.

Q. Would you say that such was indicated?

[fol. 296] Mr. McClearn: That is objectionable, I believe.

Chairman Miller: No, you should be specific.

Mr. Sayers: That's all.

Chairman Miller: Anything further?

That is all, Mr. Chapman.

(Witness excused.)

Chairman Miller: Mr. Sayers?

Mr. Sayers: Mr. Binkley.

Chairman Miller: Is it agreeable to continue, say, until 5 o'clock, approximately?

Mr. McClearn: At your convenience.

JOHN I. BINKLEY, called as a witness on behalf of the Complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Sayers:

Q. Mr. Binkley, will you state your full name and position, please?

A. John I. Binkley, Assistant Coordinator for the Anti-Discrimination Commission.

Q. How long have you been so employed?

A. It will be three years in July of '58.

Q. Mr. Binkley, did you accompany Mr. Chapman on any of the conferences, investigative conferences, that were held with the representatives of Continental Air Lines?

Chairman Miller: I would fix the dates, Mr. Sayers.

A. The conference of September, the year is '57, September 10, I was present at that meeting, yes.

Q. Who attended that meeting, Mr. Binkley?

A. Mr. Harrold Bell, Mr. Kenneth Sorby, Mr. Roy Chapman and myself.

Q. Will you give us a brief summary as to what transpired at that investigative hearing on September 10, 1957?

Chairman Miller: Only with respect to facts developed in your investigation or we will get an objection of counsel for the Respondent.

A. The meeting was, in my estimation, one to investigate, find out information from the Respondent regarding the complaint, and we discussed Mr. Green, why he had not been hired, and Mr. Bell pointed out that there were factors involved which made it very difficult for Continental Air Lines to hire Mr. Green. Primarily they were the problem that might occur regarding cockpit harmony that might never be achieved with a Negro copilot and a White pilot, or vice versa, the difficulty Mr. Green might have in getting membership in a labor union known as the Air Lines Pilots' Association, the difficulty Mr. Green might have in obtaining accommodations at the end of flights and during flight and that sort of thing, and the problem that he had become a national figure which Continental Air Lines didn't want to have anything to do with. He recognized that this is a problem, Negroes becoming airline pilots. He was in complete sympathy with the fact that something needed to be [fol. 298] done about it but felt that this should be done by the larger airlines rather than the small ones or the small airlines operating exclusively in the North, that it would be easier for the integration in airlines of those two types.

That, I think, is the gist of it.

Q. Did you discuss at this meeting about Mr. Green's ability in the link trainer, how he had reacted, his qualifications as a pilot, was that gone into?

A. The statement was made by Mr. Bell and Mr. Sorby both, that Mr. Green was qualified, there wasn't any question about his skill and ability as a pilot, and as to how well he had completed his check in the DC-3 flight or in a link

trainer, I am not sure whether they qualified it. They just said that he was satisfactory.

Q. Did they indicate whether Mr. Green had sufficient flying hours according to their standards and requirements?

A. I am not sure without referring to a memo made after that, whether or not the actual hours were discussed. It was discussed that Mr. Green more than met the minimum qualifications, and as to the number of hours then gone into, I don't recall that.

Q. In the meeting of September 10 was it discussed whether or not Continental knew that Mr. Green was a Negro before they had him come there for an interview?

A. They told us that they did know that he was a Negro, [fol. 299] yes.

Q. Did they say how they found it out?

A. Yes, they showed us an application form which had the word "Negro" written into the space marked "Race".

Q. And was indication made as to who had written in the word "Negro"?

A. No.

Q. There was nothing said who had written the name in?

A. Not to my recollection.

Q. Was anything said about Green's personality, how he met the personality requirement?

A. Mr. Bell had not met Mr. Green. Mr. Sorby had met him, and of course qualifying the statement with the short period of time that he had spent with Mr. Green he felt that he had a nice personality, at least nothing apparently negative appeared in the period of time they were together.

Q. Was anything said at the September 10 meeting about objections of the passengers which they carry to having a Negro pilot or copilot?

A. That was brought up as a possible problem, it might occur if they hired a Negro pilot or copilot.

Q. During this meeting of September 10 was anything said about the others that had taken tests, as to whether they were better qualified than Green, or whether Green was better qualified than they?

[fol. 300] A. No, I don't believe so. It was just understood that Green was eminently qualified with the experience he had had while an Air Force pilot.

Mr. Sayers: I believe that's all.
Chairman Miller: Mr. McClearn.

Cross examination.

By Mr. McClearn:

Q. You also heard Mr. Bell say that a number of other pilots, 14, I think, had been interviewed and 4 selected at that same time as Mr. Green?

A. Yes.

Q. And you also heard Mr. Bell, or I would like to ask you, Mr. Bell indicated, according to your testimony, that Mr. Green had become a national figure and Continental didn't want to become involved in the controversy, were those your words?

A. Something to that effect.

Q. And he was referring, was he not, to the fact that Mr. Green had filed a number of complaints against other persons?

A. Yes, I suppose so.

Q. Now, with respect to this—

Mr. Green: May I ask a question?

Chairman Miller: No, not now.

Q. With respect to the problem of accommodations, was the fact mentioned that two of Continental's domicile bases are located in the State of Texas?

A. Some were referred to, I wouldn't be sure of the [fol. 301] number now.

Q. Would it be your understanding, or was it your understanding at the time of this meeting that Mr. Bell was giving you his personal opinions? Let me phrase that differently, Mr. Binkley. He did not indicate, for example, that he had made any analysis or examination of the Union contract or Union attitude toward this, did he?

A. I'm not sure about that.

Q. You don't know.

A. No, I can't answer the question definitely one way or the other. It was discussed. As to the basis upon which he based his opinion, I am not sure.

Q. Now, it is true that you told or Mr. Chapman told Mr. Bell that a formal complaint had been filed against Continental Air Lines?

A. Yes.

Q. And I suspect it is further true that at the beginning of your conference you probably explained the nature of the law and what you were talking about, didn't you?

A. That's right.

Q. And you probably either explained or it was understood that there were certain sanctions that could be imposed against Continental if it was found to have violated the law, isn't that true?

A. I would say that we didn't refer to the sanction.

[fol. 302] Q. You did explain at least in general terms the purpose and effect of the Anti-Discrimination law?

A. Yes.

Q. And it is further true, is it not, that in discussing—you say Mr. Bell made certain statements as to problems that he could see. That wasn't in the nature of a speech or recitation by Mr. Bell but it was in the give-and-take of conversation with you and Mr. Chapman, was it not?

A. It was in a conversation, that's right.

Q. And it is further true, is it not, that when Mr. Bell would mention one of these factors about which you have testified, you or Mr. Chapman would seek to point out why that wouldn't be a problem, or you would attempt to minimize the effect of that problem, isn't that true?

A. We might have given him some facts in what we would consider a comparable situation.

Q. In other words, you attempted to persuade him, as it is your duty to do, that certain of these possible problems don't exist or are magnified out of proportion, isn't that part of what you did?

A. A very minor part of it. We were there to ask questions and to find out answers.

Mr. McClearn: Nothing further, Mr. Miller.

Chairman Miller: Any other questions?

Mr. White: I just wanted to ask one question.

[fol. 303] During all this discussion, only Mr. Green was discussed, is that right? I mean he wasn't generalizing, he was in there investigating Mr. Green only?

The Witness: That's right.

Mr. Sayers: Mr. Chairmán, I would like to ask this for a point of information. We are limited in our questions to just the one meeting of investigation, is that correct?

Chairman Miller: Just the investigation, yes, sir.

Mr. Sayers: Just the meeting of investigation. I might ask Mr. Binkley this question.

Redirect examination.

By Mr. Sayers:

Q. How many meetings of investigation did you have, Mr. Binkley, with Continental Air Line representatives?

A. Two.

Q. What was the date of the second meeting?

A. January 16, 1958.

Chairman Miller: That, of course, is not admissible under the basis of the correspondence between Continental and Mr. Chapman.

The Witness: Purely investigative.

Chairman Miller: Not admissible anyway.

Mr. Sayers: That's all.

Chairman Miller: That's all.

(Witness excused.)

Chairman Miller: We will take a five-minute recess.

[fol. 304] (Recess taken.)

Chairman Miller: Shall we proceed, Mr. Sayers?

Mr. Sayers: Mr. Kammerer, will you stand and be sworn?

EDWARD J. KAMMERER, called as a witness on behalf of the Complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Sayers:

Q. Will you state your name and position, please, your full name?

A. My full name is Edward J. Kammerer.

Q. What is your job?

A. I am a farmer, I work with my father in South Dakota.

Q. Are you acquainted with Marlon D. Green, the Complainant in this case?

A. I am.

Q. And how long have you known him?

A. I have known Mr. Green since 1951, somewhat over seven years.

Q. What was the occasion of your meeting?

A. I met Mr. Green at the conclusion of a sociology class, I believe, an upper division sociology class at the University which I was attending. Mr. Green, I think the occasion under which he was present there at that time, he had been invited by the professor to talk before the student body.

Q. And what was the University?

A. Loyola University of the South in New Orleans.

[fol. 305] Q. Do you know of Mr. Green's flying experience personally?

A. Well, I do to this extent. Well, my home is next to Ellsworth Air Force Base at Rapid City and has been there for some time before Ellsworth Air Force Base was established. I have had opportunity to observe Mr. Green in flight, you know, from a layman's viewpoint. I know that he does fly.

Q. Do you know that he gets along with his pilots and copilots that he works with, flies with?

A. Well, I have in my personal letter files a letter from Mr. Green, in one instance telling of—

Chairman Miller: Do you have the letter, Mr. Kammerer?

The Witness: I have the letter, yes.

Chairman Miller: Here?

The Witness: It is in my automobile outside. I didn't think that it was required to have it at this time.

Chairman Miller: You say the letter is from Mr. Green?

The Witness: From Mr. Green telling of his invitation and his having gone to the farm or home of one of his fellow crew members for a couple of weeks, a week or a couple of weeks, I believe it was. I had met some of Mr. Green's flying mates on one occasion at Ellsworth Air Force Base.

I recall a fellow officer in the Air Force of Mr. Green's [fol. 306] whom I knew before I knew Mr. Green, a White Southerner, who to this day, as far as I know, has not changed his attitude on race and integration when I discussed them with him but who said this to his brother-in-law who was a roommate of mine at the University—

Mr. McClearn: Excuse me, Mr. Kammerer.

The Witness: Yes.

Mr. McClearn: I would wish to object to this testimony.

Chairman Miller: Yes. While, of course, the rules here, as I said before, the Commission is not bound by the strict rules of evidence prevailing in courts of law or equity, I think this is going pretty far.

Mr. Sayers: I just wanted to show by this witness that Mr. Green did get along with those people with whom he worked. That was the primary purpose of calling this witness, that he was affable and could work—

Chairman Miller: By reference to letters that Mr. Kammerer has outlining a conversation with Mr. Green, he is going too far.

The Witness: I am sorry, but I understood my position was to give direct reference.

Chairman Miller: That is perfectly all right, but we are bound by the rules here.

The Witness: Yes, of course.

By Mr. Sayers:

[fol. 307] Q. Mr. Kammerer, did you send to the Anti-Discrimination Commission here a letter of recommendation for Mr. Green?

A. I did so.

Q. And of course that recommendation was favorable?

A. As I remember it, it was.

Mr. Sayers: We have here the letter of recommendation which Mr. Kammerer has sent to the Commission, showing Mr. Green's qualifications and character reference.

Chairman Miller: Do you want to have him identify the letter, the statements contained in this? Probably that is the best way to get it in.

By Mr. Sayers:

Q. I will have you examine this instrument and tell us first what it is, then I will introduce it.

A. This evidently and surely has my signature on it, a letter requesting character recommendations from me to the Colorado Anti-Discrimination Commission, Denver, Colorado.

Mr. Sayers: I would like to have this marked as Complainant's Exhibit No. 10.

(Complainant's Exhibit No. 10 was marked for identification.)

Q. I will ask you to examine Complainant's Exhibit No. 10 and ask you if this is your signature.

A. It is so.

Mr. Sayers: I wish to offer this in evidence.

[fol. 308] Mr. McClearn: I will object on two grounds. It seems to me the letter purports to be a character reference, which is certainly not an issue under the pleadings in this case.

The second ground for my objection is that if the evidence were otherwise admissible, which we do not think it is, the witness is present and can testify personally without need for reference to a previously written document.

Chairman Miller: I think that's right. He can testify, if you want to ask him about these various items on the back. However, I think this, if you withdraw the objection I think the Commission can consider its own appraisals on the basis of the issues in the case, only in the interest of time, that's all.

Mr. McClearn: Do I understand, then, that my first objection would be overruled?

Chairman Miller: No, I think probably your objection is good, but I was hoping maybe we could save time.

Mr. McClearn: I would stipulate that that could be admitted in evidence except for the fact that I don't believe character evidence is appropriate or material to this inquiry, whether by word of mouth or in written form.

Chairman Miller: Well, unless character may become material here with respect to the Complainant's qualifications.

Mr. McClearn: I would say this, Mr. Chairman, then, that would properly come in by way of rebuttal, and I certainly [fol. 309] wouldn't ask Mr. Kammerer to stay if he doesn't choose to stay. I will say that if we raise that issue I will stipulate this may be used in rebuttal.

Mr. White: According to the employment letter it says they would be employed according to their character, skill and physical qualifications. Not knowing whether or not somebody would say he didn't have the proper character, I would assume this would be good evidence, too. Like you say, I suppose it would be best to come in if it is challenged.

Chairman Miller: I think you could simplify it by simply asking what his opinion is of Mr. Green's character.

Q. What is your opinion of Mr. Green's character as you have known him?

A. Excellent.

Mr. Sayers: I think that's all.

Mr. McClearn: No cross-examination.

(Witness excused.)

Mr. Sayers: I will call Mr. Green.

Chairman Miller: How long will your case take, Mr. McClearn? Is it possible you could complete this afternoon?

Mr. McClearn: No.

MARLON DEWITT GREEN, having been previously sworn, was recalled and testified further as follows:

Direct examination.

By Mr. Sayers:

Q. I should like to ask, Mr. Green, in your experience [fol. 310] as a pilot how have you gotten along with the pilots and copilots with whom you have had to work?

A. I think, if I may, I would like to preface this by saying that in my military experience I have flown a total of approximately 3,000 hours. Of that 3,000, approximately 2900 have been in multiengine equipment, in most cases requiring a copilot or some other crew member, and during that time, as my record will show, I have crashed no airplanes for any reason. Further, none have been crashed for reasons of crew disharmony. On the contrary, I feel that my relation is borne out by my evaluations of conduct and performance as a military officer and that the objective fact that these years of flying, these hours of flying, have been accomplished in a safe and exemplary manner perhaps will answer that question satisfactorily.

Mr. McClearn: Excuse me at this point. I am going to get awfully unpopular, I am afraid, but I do object to that testimony on the ground it is not material and is self-serving. Again, it is properly brought out in rebuttal if we challenge Mr. Green's ability to get along with his fellow citizens.

Chairman Miller: Yes. I think the weight of it can be determined by the Commission, too, considering the fact that it is a self-appraising statement.

Mr. Sayers: It has been suggested that there would not be cockpit harmony if Mr. Green was employed. I am simply trying to show that Mr. Green has worked with other [fol. 311] pilots and copilots and has gotten along with them, has not crashed any planes as a result of working with someone of a different race.

That's all, Mr. Green.

(Witness excused.)

Chairman Miller: Then if you have no further testimony tonight, Mr. Sayers, we might as well adjourn until 10 o'clock tomorrow morning, is that agreeable?

Mr. McClearn: At your convenience.

Mr. Manzanares: Will it be agreeable if I do not show up until approximately noon? I am sure you can go ahead.

Chairman Miller: By noon we may be through.

Mr. Manzanares: I have a chore I can't get out of, pallbearer at a funeral. I will come in as soon as I can.

Chairman Miller: The evidence will be available to you, anyway, the transcript.

Then if there is nothing further at this time we will adjourn until 10 o'clock tomorrow morning.

Mr. McClearn: Mr. Miller, I am not familiar with the Commission's procedure, but I am quite concerned about the possibility of people going out and coming back and hearing portions of the testimony.

Chairman Miller: Here is the procedure. Every Commissioner will have a transcript of all the testimony before there is any ruling on this case.

Mr. McClearn: I see.

[fol. 312] Chairman Miller: So that there is no question, while the cases may be heard piecemeal by some who are not observing the demeanor of the witnesses, possibly that could be the only objection; nevertheless, there will be full opportunity to read all the testimony and all the arguments are being noted as well, and any comments of counsel. So that I think you need have no concern about the matter not being fully considered by all the members of the Commission.

Mr. Chapman: All the deliberations, Mr. McClearn, are made by the Commissioners and four Commissioners comprise a quorum. That is done in executive session with the transcript before them.

Mr. McClearn: I would like to think about it a little bit. I have nothing more to say, thank you.

Mr. Manzanares: I hate to foul it up. It is an uncle of mine.

Chairman Miller: I can understand your point of view, but I think you will find that the danger seems more real than it is, actually, because everybody is going to read this testimony. I mean, it is unfortunate that everybody can't be here throughout but these things happen.

Mr. Manzanares: Unless you would rather go right on through tonight.

Mr. Green: I concur.

Chairman Miller: I would rather not, frankly, and I [fol. 313] don't think you would want to wait until tomorrow noon to start or tomorrow afternoon. In that way we would know Mr. Manzanares would be here, if you would prefer that.

Mr. McClearn: No. It is just a new idea to me, Mr. Miller.

Chairman Miller: Well, I can see your point of view if it were simply a matter of not reviewing all of the testimony in the transcript with every member of the Commission receiving a complete transcript of all of the proceedings. As a matter of fact, under the rules, and I think under the law, the Commission has the right to designate only one as the Hearing Examiner.

Mr. McClearn: I think you are all to be commended to take the time to come down here.

Chairman Miller: Well, we appreciate your cooperation, too, in the matter, in trying to determine the issues.

All right, then, 10 o'clock tomorrow morning.

(Whereupon, at 5 o'clock p.m., the proceedings were adjourned until 10 a.m., Thursday, May 8, 1958.)

[fol. 314]

PROCEEDINGS

Chairman Miller: I think the record should show that it is now 10:20 a.m., that this matter had been continued until 10:00 o'clock this morning. The parties are here except for the Complainant and efforts to locate him have been of no avail, and if it is agreeable, we will go ahead. Is it agreeable with you, Mr. Sayers, to proceed, and Mr. McClearn?

Mr. McClearn: Yes.

Mr. Sayers: Yes.

Chairman Miller: Mr. Sayers, when we adjourned last night you didn't know whether you had any other witness.

Mr. Sayers: I think we are finished.

Chairman Miller: So that you rest?

Mr. Sayers: We rest at this time.

Chairman Miller: Mr. McClearn?

MOTIONS TO DISMISS CERTAIN ALLEGATIONS OF THE COMPLAINT AND DENIAL THEREOF

Mr. McClearn: At this time I should like to move that the allegation of Paragraph 4, which is to the effect that Respondent requested a photograph in its application

form with intent to discriminate for reasons prohibited by the Anti-Discrimination Act, be dismissed.

I should like to further move that the allegation of Paragraph 2 of the Complaint which alleges that Respondent refused to employ Complainant on July 8, 1957 because he was a Negro, be dismissed.

In both instances the motion to dismiss is based upon [fol. 315] the complete lack of proof of the essential allegations.

Mr. Chairman, I will not make an extended argument, but I would like to simply summarize the bases for the motion.

With reference to the allegation of Paragraph 2 of the Complaint, which is that respondent Complainant was not hired because he was a Negro on July 8, there is a total lack of any evidence whatsoever that Mr. Green's race had anything to do with the actions of Respondent. The only testimony on the point whatsoever is from the Complainant himself, and he testified unequivocally, truthfully, that he was interviewed, given the same treatment, so far as he could tell, as all other applicants at Continental Air Lines, that he was treated courteously, cordially and kindly, and that he personally saw no evidence of discrimination against him, and the only further testimony is from Mr. Chapman in connection with certain discussions with Mr. Bell. We objected, of course, to consideration of those discussions at the outset, but even considering them for purposes of this motion, the testimony was that Mr. Green was one of 14 applicants, four of whom were selected by Continental Air Lines. We do not question Mr. Green's qualifications as an airline pilot. Neither do we question his appearance or personality. The fact remains that without some proof that the reason he was not selected out of a much larger group is because he was a Negro, there is simply no basis upon which this charge can be sustained.

[fol. 316] The same thing is true with respect to the photograph. The photograph is only prohibited by the Act if it was included for the purpose of discriminating on the basis of color, religion, and so forth. There isn't one iota of testimony that Continental's purpose in asking for a

photograph had anything to do with the man's color or his race or his religion or any of the other prohibited areas. Consequently, that charge should not be sustained.

Chairman Miller: Those are your motions?

The Commission is of the opinion that the motions should be denied at this time subject to renewal at the conclusion of the testimony.

Mr. McClearn: All right, sir. Mr. Bell, please.

HARROLD W. BELL, JR., called as a witness on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. McClearn:

Q. Will you state your name and address, please?

A. Harrold W. Bell, Jr., 5634 Montview Boulevard.

Q. What is your occupation, Mr. Bell?

A. Vice President, Personnel, Continental Air Lines.

Q. What function does your office perform in the procurement of flight crews?

A. We are responsible for eliciting applications from pilot flight engineer applicants—you are using the term in [fol. 317] elusively here, I presume—reviewing them—

Chairman Miller: Excuse me a moment, Mr. Bell. I think the record should show now that Mr. Green has appeared.

For your information, Mr. Green, Mr. Bell has just been sworn and stated his name, address and his occupation.

A. Continuing, scanning these for age, experience, other qualifications, height, weight, and retaining such applications in a file, an eligible file, for review at such time as openings might appear.

Q. Do you attempt to maintain a file of at least paper-qualified pilot applicants?

A. Correct.

Q. Does the number of persons in the Continental pilot force—and I am using that term throughout these proceedings as including both pilots and copilots—does the

number of Continental pilot personnel vary from time to time, and if so, in what manner?

A. Yes. There are pronounced variances in the numbers of pilot personnel, depending on the addition of flights perhaps in season or the cancellation or withdrawal of such flights which would produce, of course, furloughs, from the dismissal of pilots for cause who are in their probationary period, from the addition of new routes that would require more flights, and consequently more crews. So there is a fluctuation caused by normal ebb and flow of business as [fol. 318] well as the expansion of the airline.

Q. And that's both up and down?

A. Correct.

Q. Now, when the company decides to employ additional pilot personnel, what does your office do?

A. We will extract all of the eligible applicants, paper eligibility being the term used here, review them with the operations department representatives, will then be advised the number of openings and will call in pilots for check-out, for personal interview, for flight check in the manner that has been previously discussed.

Q. Do I understand that the company is constantly receiving and processing paper applications?

A. Constantly from all over the country, from all over the world.

Q. Now, if you have a certain number of positions to be filled, how many applicants will you bring in, for example, for interview, or how do you determine?

A. That's a somewhat difficult question to answer. I might depart one moment and say that in our experience we hire one of every five paper-qualified pilot applicants that appear before us and are interviewed. That isn't necessarily to say that if we have five openings we will bring in 25 applicants. We might bring in 35, depending on where they live. But as we realize that they are going to be put to some expense in coming to us, they might be [fol. 319] in Boston, or as in Mr. Green's case I believe in New York, and he was put to some expense to visit us, and so we are not frivolous in calling in great wads of people, but we want to be sure that when we call them that we will on an average be able to get the number that

we wish, knowing that perhaps 80 percent are going to be disappointed.

Q. But you do bring in, then, more paper-qualified applicants than there are positions to fill?

A. Substantially more.

Q. Is there a reason for that practice?

A. Yes. As long as we are screening applicants we might as well screen a substantial number in anticipation of future openings, so that we can avoid that re-check, we will know that we have somebody, and not just standby reserve but ready reserve that we have already checked out. The only thing perhaps we might not do with certain of these excess applicants, if we can use the word, is give them a physical examination, as that we want just before they are assigned to actual student training.

Q. Now, what happens to a pilot applicant when he is brought to Denver for interview?

A. Many things. Sometimes we believe we could handle it much better. Our employment operation is conducted approximately three and a half miles away from the airport. The pilot applicant has been sent passes or we have requested passes perhaps from other airlines to bring him to Denver at no charge to him except perhaps a service [fol. 320] charge that such an airline might levy. He will come into the terminal at some time, as he is on what we call a space available basis. We are never sure exactly what flight he might be able to come to Denver on.

But he will usually call us and we will instruct him perhaps to come to our employment office; sometimes he will go immediately to the hangar, to the operations department, and we have no objection to this at all as long as that at sometime we have an opportunity just to say How Do You Do to him.

Q. Do I understand that some portion of Continental's offices are located at Stapleton Air Field?

A. That is correct, the operating departments primarily.

Q. And what offices are located elsewhere?

A. The Treasury Department and the Personnel Department.

Q. I see. Now, what happens to the pilot after he arrives in Denver for this interview?

A. Well, if he has gone directly to the operations department he will see the Chief Pilot, the person responsible for handling the Denver Pilot Base. He is expected, of course, so that he will be given a link check and a flight check and there will be some discussion with the pilot to determine what he has been doing, what type of flying he has. We will frequently not wish to employ a man, regardless of his experience, if a substantial part of it has been command time. Maybe I should explain what I mean here. [fol. 321] Q. Would you, please?

A. We hear a great deal today of the career copilot, the individual who will not be able to bid up to Captain for eight, nine, ten years or longer who will forever be in a secondary position, it seems like forever to him. We have found it unwise to take them with too much experience because of their unwillingness to take orders from the captain. We recently rejected a man with 7,000 hours' flying time.

Q. Who was otherwise qualified?

A. Otherwise qualified. It is more than just flying qualifications, of course, that we are concerned with here. But he will be checked out or he will be returned to his home city or whatever point he came from and will be later advised whether or not he is accepted and included in the class.

Q. That is one among several qualifications which the Company looks for in its applicants, is that correct?

A. Correct.

Q. What are some of the other qualifications which Continental pilots must have?

A. Certainly flying aptitude as well as flying experience.

Q. Where would the aptitude be demonstrated?

A. It will be demonstrated in a link. It will be demonstrated in actual flight check in the air.

Q. Given by Continental?

A. Given by a qualified Continental check pilot.

[fol. 322] Q. Are there any other factors or qualifications?

A. We are very interested in his attitude, what is he looking for, is he perhaps—has he been— Well, I wonder if I could depart a moment here just to generalize on some-

thing. I don't want any airline identified by what I say but I think perhaps this will explain, if I may.

Chairman Miller: Yes, I think the more facts the better.

A. Airlines are grouped in various classes. You have your four largest airlines, any one of which is five to six times as large as many of the smaller ones. Many times a large airline will have hired a pilot, and will furlough him. They may train for stock, so to speak, and have him available. He will come to us for a position. We have often found that the pilot conditioned by a major carrier looks down his nose slightly at a small size airline like Continental. So we want to know what his attitude is. Does he feel perhaps another line has mistreated him? Does he feel that he is the best pilot in the world? Is he going to be able to learn? What is his home life, what is his domestic life, what is his financial life? In the public eye, the pilot is quite a glorified person. We put our lives in his hands. I am not a pilot, so I can speak very freely here. We put our lives in his hands—

Chairman Miller: I agree with you.

A. Everyone of us. The Hell's Angel type of pilot is a thing of the distant past. We want a person who has [fol. 323] been a good normal, quiet, self-respecting individual who is going to take good care of his passengers by taking good care of himself and his personal life. So these things we are trying, admittedly they are subjective and they always are when you are talking to someone, but these we try to identify at the time we are interviewing pilots.

Q. Now, you stated that approximately one of five persons who is brought to Denver for the flight check type interview is selected and you have indicated some of the qualifications that you are looking for. What bases do you use for not hiring, let's say, the other four?

A. Well, they can run all over the lot, Mr. McClearn. I will give you a rough example. We rejected 143 pilots last year as being unsuitable. In some cases there was falsification of their applications, distortion of their actual flying experience, perhaps they failed to meet certain physi-

cal requirements such as height; they were overweight; perhaps they were unable to fly if they said they could, and we were so able to demonstrate. Perhaps we weren't impressed with their manner when they talked to us, and pictured them before a Continental passenger or crew of passengers and felt perhaps that they would be happier working for another organization.

There are many reasons for the rejection of a pilot. We have been in a very fortunate position, I am knocking on wood here, on this. Because of our small size and our excellent location we have been able to draw pilots from almost anywhere. Our bases are limited, as is generally known. We are expanding, and consequently a pilot is able to perhaps be advanced more rapidly with us than he would with another airline. And so we have been able to pick and choose and often we have made mistakes, I am sure, but they are honest mistakes, anyway.

Q. You have stressed the attitude of the pilot applicant. Does his attitude with relation to his fellow pilots and his fellow pilot's relations with him come into play in that area?

A. Vital.

Q. For what reason, Mr. Bell?

A. 99 percent of a pilot's flying time is perfectly uneventful but in a moment of emergency there has to be implicit confidence one man in the other that each will know his business and be able to perform his function rapidly and without question.

Q. Are you in effect saying that the pilot and copilot must operate in harmony as a team?

A. Exactly.

Q. Now, turning to 1957, will you state whether or not Continental Air Lines employed additional pilots during that year?

A. Yes. We employed approximately 35 pilots.

Q. Excuse me, there's one point I wanted to bring out in connection with our immediately past discussion. You [fol. 325] stated that Continental employs, approximately one out of five persons that it brings to Denver for interview. Now, do you receive other applications whom you do not even bring to Denver for interview?

A. Yes.

Q. Any substantial number?

A. I don't see all the applications. Mr. Sorby, the Employment Manager who is in this room, is better informed on this than I, but I imagine that we receive three for every one that we believe should be brought in to see us.

Q. I see.

A. That's a guess, the actual percentage of rejection.

Q. Again to 1957, can you state during what periods of the year you employed these 35 people?

A. Yes. If you don't mind, I jotted down earlier the approximate months in which we had classes. There were 8 pilots employed in January of 1957, there were 4 in March, there were 4 offered positions in July, we only trained 3; there were 10 in August; there were 7 in September; there were 3 in November.

Q. Now, you used the word "trained" and "classes". Will you tell the Commission what happens to a Continental pilot after he has been selected for employment and before he is put on schedule?

A. Well, he is put through approximately one month of [fol 326] intensive training classroom and in the air on the types of equipment that we fly, the engine, the operation of the engine, things that might go wrong. He is constantly tested to make sure he is keeping abreast of the information being provided him. He is given training, of course, on our own procedures, our cockpit procedures, airway procedures, governmental regulations, and, as I say, interwoven constantly with flight time in the air.

Q. Now, in connection with the persons whom you employed can you state how many persons were interviewed as opposed to those who were actually employed during the year of 1957?

A. About 178 people were actually screened by us to select these 35.

Q. 178, approximately, brought to Denver for interview, is that correct?

A. Yes. There's my one for five relationship.

Q. And in connection with the July class from which you stated you took four people for training, how many people were interviewed at that time?

A. Fourteen.

Q. When was Mr. Green interviewed, approximately?

A. June 26 and 27.

Q. And then the next successive class would have been the July class, is that correct?

A. Yes.

[fol. 327] Q. And you heard Mr. Green testify yesterday, did you not, that as far as he could tell he was given the same treatment at Continental as other applicants at the same time?

A. Certainly.

Q. Was that accurate?

A. Yes, to the best of my knowledge. I didn't have the pleasure of meeting Mr. Green until yesterday morning.

Q. Now, Mr. Green was not of the 14 persons interviewed just prior to the July class, Mr. Green was not one of the four selected, is that true?

A. That is correct.

Q. All right. What was done with Mr. Green's application at that time?

A. It was kept in a file of eligible checked-out pilots from whom we could draw for subsequent classes.

Q. Mr. Green, then, did meet Continental's minimum qualifications for pilots, is that correct?

A. He did.

Q. And what was Mr. Green's status after he was advised that he had not been selected for the July class?

A. Still retained as an eligible candidate for pilot position.

Q. Now, that wasn't true with respect to all of the people who had previously been interviewed, is that correct?

A. No.

[fol. 328] Q. What was the position of some of them?

A. They were told one way or the other that they were not going to be considered any further.

Q. In other words, those persons that didn't meet the minimum qualifications were not subject to further consideration?

A. That is correct.

Q. Now, after that time was Mr. Green's application withdrawn from further consideration?

A. It was in the early part of August.

Q. For what reason?

A. We were made aware of some publicity appearing in the Albuquerque Journal of August 4, advising that Mr. Green was bringing an action against various persons and companies, which seemed to be quite extensive, and at that time we elected to cease considering him.

Q. For what reason? Well, let me phrase it differently. Would you explain to the Commission why in your judgment Mr. Green's action in bringing actions against other persons should or did cause his application to be withdrawn?

A. Well, for a number of reasons. One, the feeling that we have that a pilot because of his unique position should not be involved in public controversy. Now, this is Continental's feeling, strong as it is. It is my own personal feeling, also, that during Mr. Green's training period there [fol. 329] was strong likelihood that he would be required to appear elsewhere perhaps in pleading of the various cases, and we believe that a person should stay in training until the thing is completed. You can't break it off in the middle and have it pop up elsewhere. Those were considerations that influenced us.

Q. Was the fact that Mr. Green's other actions had to do with his race significant, or did your objection go to any type of activity?

A. Any type of activity. We are not interested in those, as the saying is, pilots who make the front page.

Q. Regardless of for what reason?

A. Regardless of what reason. In our experience we have terminated pilots for just this reason, who are out of their seniority period, out of the probationary period.

(Respondent's Exhibit No. 2 was marked for identification.)

Q. Mr. Bell, I hand you what has been marked Respondent's Exhibit 2. Will you tell me what it is, please?

A. This is an application for employment currently in use by Continental Air Lines.

Q. How long has that form been in use?

A. Since January 1954.

Mr. McClearn: Mr. Sayers, I hand you Respondent's Exhibit 2.

I offer in evidence Respondent's Exhibit 2.

[fol. 330] Chairman Miller: Any objection?

Mr. Sayers: No objection.

Chairman Miller: Respondent's Exhibit No. 2 will be admitted.

(Respondent's Exhibit No. 2 was received in evidence.)

By Mr. McClearn:

Q. Did the former form which was superseded by Respondent's Exhibit 2 have a space for the applicant to indicate his race?

A. Yes.

Q. Does that space appear on the form presently in use?

A. It does not.

Q. Will you tell the Commission why that was eliminated?

A. Useless information. We are not interested in the racial extraction of an applicant and we needed the space also for useful information. We organized the form completely and deleted those things in which the Company was not concerned.

Q. You heard Mr. Green testify yesterday that he obtained the form which he submitted, which was the old style form at your San Francisco office?

A. Yes.

Q. Can you explain how Mr. Green happened to obtain that form, the old style form?

A. Well, I can't explain how he happened to obtain it. I can explain how it happened to be there, I am sure. We [fol. 331] have had trouble with that form from time to time. It looks almost identical to this application, with the same heading. When the form was revised—we completed our revision in 1953 and it was issued January 1, 1954—we instructed all field offices to destroy the obsolete form, not once, but on a number of occasions. The active points on our system that we visit every now and again will use up their applications rather quickly. San Francisco is not yet a Continental point. We hope that we will be serving it before the year is out. We maintained a sales office in

San Francisco which was, as the term goes, off-line. Apparently there had been very little request for applications, as it is the only explanation I have of Mr. Green being able to find one. We are continually in an expense control drive and I suppose somebody thought, "Well, now, that's a fine application, I'm not going to throw it out and we'll just wait until we use it up."

Q. But your office has instructed the various offices where this form is distributed not to use the old form?

A. Correct.

Q. Now, in connection with their application form does Continental request applicants to submit a personal photograph?

A. We do. We ask for it from some classifications, those that primarily are facing the public, whose physical appearance and attractiveness is a selling point, and pilots to a certain extent, and hostesses to a very great extent. [fol. 332] Q. How long has Continental asked for photographs in connection with applications?

A. Well, to my knowledge, through the 1940's and 1950's.

Q. Can you state whether the practice of requiring a photograph with application forms is widespread both among other air carriers and businesses?

A. It is my belief that it is widespread among air carriers. Other businesses I am not too familiar with, although we have seen quite a number of application forms from other companies. The air lines, I am sure, have the same concern that we do.

Q. Well, now, in connection with the reason why you ask for a photograph, can you amplify or can you tell the Commission why you can't observe the person's characteristics when they are brought to Denver for interview?

A. Well, the person brought to Denver for interview may have come from any part of the United States, in some cases from Canada or Mexico, at some expense to them. If we can see at the outset a physical disfigurement or lack of an attractive appearance which would perhaps disqualify, let's say a hostess applicant, where the hostess must be attractive, she is used for sales promotion purposes and for every reason that we are all familiar with here, to require such a girl to come from Boston or somewhere else

at an expense that can be substantial and be disqualified we feel is wrong.

[fol. 333] For example, we frequently have people who falsify their applications, girls particularly, and I am not, the ladies present, discriminating against ladies, but whose pictures perhaps won't reveal the fact that they do have a problem that does show up when you face them, a scar, a disfigurement, that would cause their disqualification. Quite frequently the application will show you what you need to know. It is the hostess group that we are primarily concerned with here, the pilot group to a certain extent. Thereafter, in diminishing importance, the photograph. I doubt that we ever require a photograph from office personnel, reservations personnel, and I am certain that we call in for interview many people who have not submitted a photograph.

Q. Does the company expend a certain amount of time interviewing persons, is that a factor?

A. A constant factor, yes.

Q. In other words, there is no point in expending your time and the applicant's time interviewing them if a disqualifying disfiguration is apparent?

A. Not only is there no point in expending the time, but I personally feel that it is unfair to the individual who is turned down to face that embarrassment. We try to make it as gentle as possible.

Q. Now, will you tell the Commission, Mr. Bell, whether Continental's request for a photograph contained in the [fol. 334] application has anything whatsoever to do with discrimination based on race or religion?

A. Nothing at all.

Q. Will you tell the Commission what Continental's policy is with respect to employment of the so-called minority groups, if it has such a policy?

A. Actually, we have no policy at all. Perhaps that's the most positive method of expressing it. It was read yesterday into the record and it is a policy to which we adhere.

Q. Can you paraphrase that again, please.

A. We do not discriminate in any way for race, religion, or for any other reason. We are trying to judge applicants

on their qualifications, what they can offer us, what kind of citizens are they going to be with Continental Air Lines, how good are they in representing our company. Every employee is a representative of our small airline and I am sure of the larger ones, too. It is those things we are looking for.

Mr. McClearn: Would you mark that Respondent's Exhibit 3, please?

(Respondent's Exhibit No. 3 was marked for identification.)

Q. Mr. Bell, I hand you what has been marked Respondent's Exhibit 3. Will you tell me what it is, if you know, please?

A. That is a Telefax communication from Western Union.

Q. Was that received by Continental Air Lines?

[fol. 335] A. Received by Continental on a machine in our office.

Q. Does it have to do with Mr. Green?

A. The name Marlon D. Green is mentioned.

Mr. McClearn: I offer in evidence Respondent's Exhibit 3.

Chairman Miller: No objection. It will be admitted.

(Respondent's Exhibit No. 3 was received in evidence.)

Q. Would you read the contents of the exhibit, Mr. Bell?

A. "Your night letter 5th (July) Marlon D. Green, 734 South Smith Avenue, El Dorado, Arkansas, signed Jack Weiler, Continental Air Lines, Inc., undelivered. Said to have gone to Lansing, Michigan, 9113 Nypt Street, Service Department, Denver 6th."

Q. Does that exhibit bear a stamp indicating when it was received by Continental?

A. Received by Continental Air Lines on July 9, 1957, in the Personnel Department.

Q. Will you tell the Commission generally what the nature of Continental's business is?

A. We are an airline certificated by the Civil Aeronautics Board to provide air transportation to passengers, freight, cargo and mail.

Q. In what States does it operate?

A. We operate in eight States, Colorado, New Mexico, Texas, Oklahoma, Kansas, Missouri, Illinois, and California.

[fol. 336] Q. Approximately how many employees does it have in Denver?

A. Approximately 800 employees.

Q. How many pilots, Mr. Bell?

A. Approximately 220 pilots.

Q. Where are those pilots based?

A. 90 to 95 are based in Denver, and I am pulling this out of memory; we have bases at El Paso and Dallas, and I would say of the 125 remaining, about 60 in each, 60 to 65 in each city. Dallas and El Paso, did I add that other city?

Q. Yesterday Mr. Chapman and Mr. Binkley testified concerning a conversation which you had with them in your office, I believe, on or about September 10, 1957. Will you tell the Commission first what subjects were discussed at that time?

A. Well, initially the complaint of Mr. Green that Continental had refused to hire him because of his color, the facts of the case as we knew them were reviewed. There was a general discussion—

Q. Excuse me. Were those facts substantially the facts to which you have testified this morning?

A. Correct.

Q. Proceed.

A. The Company's feeling about people in public controversies was explored and then Mr. Green was not discussed for the balance of our conference which had been [fol. 337] conducted on a very informal basis, a very pleasant basis. Mr. Chapman was very interested in how the colored pilot was going to obtain job opportunities in the airline industry.

Q. Are you speaking of colored pilots specifically or generally?

A. Generally.

Q. You weren't talking about Mr. Green at that point?

A. We had, to my knowledge, concluded the discussion of Mr. Green and Mr. Chapman said something to the effect, "How is this problem in the industry going to be broken?"

Q. Yesterday Mr. Chapman and Mr. Binkley specified certain things which you purportedly said at that meeting. Would you explain the context or explain if you said those things, and if so, the context in which they were made.

A. Well, during our conversation, which was informal, and I want to stress here that any of those things were a personal opinion brought out solely during the course of the conversation with Mr. Chapman asking, I suppose, for my professional opinion as to what might be done throughout the industry, and I did express certain problems that I think we are all aware of as considerations.

I recall stating first off that it would be very difficult for Southern airlines, regardless of how they felt, to be the first to move; that, as I believe Mr. Chapman or Mr. Binkley brought out, it was my feeling that perhaps a Northern [fol. 338] carrier would be the first to prove to the industry that there was no problem and that there would be no cockpit conflict of any sort, and again as a personal speculation when we were reviewing possible problems I mentioned one of layover points. A layover point, I think as most of us know, forgive me if I use a term that has industry identification, of housing, the possibility of restaurant facilities in some areas that might be made an issue of by certain people. These were personal concerns entirely.

There was mention of my feeling about the Airline Pilots' Association and I have no knowledge whatever, I think this was brought out, of what their attitude as a Union is. They are a very fair organization and I do have high regard for them and I think they will be perfectly fair in this matter.

Q. As I understand your testimony, then, Mr. Bell, this discussion of possible industry-wide problems took place after you had discussed with Mr. Bell and Mr. Chapman and Mr. Binkley Continental's application from and treatment of Mr. Green?

A. General conversation, that was all.

Q. Did you feel that Mr. Chapman was inquiring for the purpose of obtaining information about an industry-wide problem?

A. Exactly. That was the only feeling I did have, that he wanted my opinion as an industry representative with some experience, not speaking for the industry, of course, [fol. 339] or for our own airline, but just what did I think might be done, and that was my entire feeling during the conference relating to this subject, that it was to give Mr. Chapman some avenues of approach, perhaps, and his assistants.

Mr. McClearn: That's all I have at this time, Mr. Miller.

Chairman Miller: Mr. Sayers.

Mr. Sayers: May we have a short recess?

Chairman Miller: Five minutes?

Mr. Sayers: Five minutes will be sufficient.

Chairman Miller: All right.

(Recess taken.)

Chairman Miller: Are we ready to proceed?

Mr. Sayers: We are ready.

Chairman Miller: All right, Mr. Sayers.

Cross examination.

By Mr. Sayers:

Q. Mr. Bell, will you restate to me so that I can know just what your job is at Continental?

A. Well, sometimes it is not an easy question to answer, sir, but I am Vice President of Personnel. I am responsible for, well, general area wage and salary administration, recruiting, assisting in the selection of eligible candidates for positions, the maintenance of files of eligible people, collective bargaining to a limited extent, general indoctrination.

Q. Do you interview the applicants as they come in?

[fol. 340] A. Only occasionally, Mr. Sayers. We have an employment operation; Mr. Sorby is the Employment Manager who is responsible primarily for the actual interview.

Q. And did you have any part at all in interviewing Mr. Green?

A. No. As I say, I didn't meet Mr. Green until yesterday morning.

Q. In determining the qualifications, now, Mr. Bell, for your fliers, you have gone into detail somewhat about what is required. First, I believe you mentioned the flying aptitudes. Explain or break down a bit just what that would entail.

A. Well, aptitude, of course, would be the ability to fly or to learn to fly. In our case we want it brought one step farther to actual flying proficiency, not too extensive, and as we don't have the facilities for a great deal of training we don't want it too limited.

Q. You also consider experience, I believe?

A. Yes, we do.

Q. That is, the pilot's prior experience before he makes application, is that correct?

A. Exactly.

Q. And the pilot's attitude, now, will you break that down a little more as to what you require in attitude?

A. Well, that is objective and I wouldn't exactly know [fol. 341] just how to define attitude. It is your reaction to the man as you talk to him, what you can extract from his work record, what you can see from his home situation; as our application shows, there is provision for marital status to be included. We are interested in scholastic history, scholastic activities, what did the person do. If we were, for example, hiring a salesman we would want someone who had been active in meeting and working with the public, and so on, how did he conduct himself during the interview?

I mentioned a problem that I am sure Continental isn't alone in, in sometimes running into people who look at us as a very small-time operation, which we find sometimes offensive. It is total reaction to an individual based on what he can show and tell you.

Q. How are those things gathered, or by whom are they gathered, these different—well, for instance, the aptitude test, experience test, and attitude test, who checks on that?

A. Well, those who have actually interviewed the person, talked to him.

Q. And they make a written record of it I suppose?

A. Not always. We aren't that formal, nor do we have the clerical assistants to put everything in writing. It can sometimes be conversation.

Q. Well, do you have anything to which you could refer to to show how Mr. Green responded to these various tests that [fol. 342] we have mentioned?

A. I imagine Mr. Green, as we have already said, Mr. Sayers, is a good pilot and a very pleasant chap. He conducted himself very well with us.

Q. You spoke of the larger airlines. You testified that you were giving your personal opinions as to some expressed fears, perhaps we should call them, and I am wondering if you can tell the Commission at this point whether or not any of the larger airlines are now hiring Negro pilots, do you know?

A. I do not know.

Q. Do you know of any effort that has recently been made by these larger airlines to get Negro pilots into their service?

A. No, sir, I do not. I don't know of any effort.

Q. Do you know of any conferences that have been held in that regard?

A. None that I have attended or know of personally. I believe there's a President's Committee on Fair Employment Practices that meets every now and again with some of the airlines. I am not aware—

Q. You are not a part of that?

A. No, we are not a part of it.

Q. Well, are you informed as to what is being done, if anything, by the larger airlines towards working the minority groups into their service?

A. No. We do not exchange employment information of [fol. 343] that sort. May I say here, Mr. Sayers, we don't exchange it, there is no formal exchange. Every once in a while we may run into someone who is recruiting for another carrier and ask how he is making out, what are you looking for. Sometimes another carrier will call up and say, "We need people for our accounting department", and we will try to refer them to them, but being in Denver and somewhat isolated there is no heavy recruiting of ground personnel here. We don't know too much of what the other people are doing.

Q. Now, at the time Mr. Green was asked to come to Denver, I wonder if Continental knew that he was a Negro?

A. No, I don't believe so.

Q. When did you first find it out, when he arrived?

A. Presumably.

Q. Would it have made any difference, do you think, with Continental if they had known that Mr. Green was a Negro?

A. We were interested in checking Mr. Green for his qualifications as a pilot, to make sure that he was an acceptable pilot.

Q. And his qualifications proved satisfactory throughout?

A. They were satisfactory.

Q. At the time Mr. Green was here, by whom was he interviewed?

A. It is my understanding, and I believe Mr. Green [fol. 344] brought this out yesterday, that he talked to Mr. Cramp and Mr. Sorby of the Personnel Department.

Q. And do you know or do you have any information as to what transpired in those interviews?

A. No. I think we have already stipulated that he met our qualifications. There was none—occasionally, of course, those who do interview will get together and say "We don't think this would be a good man for a given job" or a good woman for a given job and if there is unanimity of agreement, that is the end of the applicant. Nothing of that sort intervened in Mr. Green's case.

Q. I believe you testified that after Mr. Green had returned or had had his interview and had perhaps returned to New York or back East, you left his file among the available list?

A. Yes.

Q. And it so remained for how long?

A. Until this Associated Press article appeared in the Albuquerque Journal, it was brought to our attention.

Q. Do you now recall what this article consisted of?

A. Yes.

Q. Would you tell the Commission about this article?

A. Yes. There was an article over an A.P. identification, there was no date appearing, it was not date-lined, stating that Mr. Green had brought action against several airlines. [fol. 345] Now, this is out of memory, United I believe was one, Capitol was another, I don't remember the other car-

riers, against General Motors and against a fixed-base operator in Lansing, Michigan. It is my recollection there were three or four airlines included. We have, of course, the article, but I don't have it in my pocket.

Q. And was there something about this article that caused your office to become antagonistic to Mr. Green?

A. We felt, as I have stated earlier, that pilots leading the kind of lives they must in the public eye, should not be in public controversy. We might be thoroughly sympathetic but we still feel a pilot is in a very unique position before the public.

Q. I believe you also mentioned, and referring now to your personal opinions, perhaps not speaking for Continental necessarily—

A. No.

Q. —but you felt, I believe you testified, that you were a little afraid there might be lack of cockpit harmony?

A. That is always possible.

Q. Could this lack of harmony result between two persons of the same racial identification?

A. It certainly could.

Q. Does it ever happen, so far as you know?

A. I believe it does, and I believe we have had to take [fol. 346] action when it occurred.

Q. Would you know of any instances of any breaks or crashes having occurred as a result of this lack of harmony in the cockpit?

A. None that are so identified, Mr. Sayers. May I say here that could be misconstrued. I am aware of no accidents that are even indirectly attributable to that matter, lack of cockpit harmony.

Q. Well, I might ask you this: Do you know of any instances wherein a crash has occurred as a result of a lack of cockpit harmony because of a White pilot and a Negro copilot, do you know of any such?

A. No.

Mr. McClearn: Mr. Chairman, I wonder if inquiry into Mr. Bell's personal opinions is germane to the issue before the Commission. We, of course, went into them on our direct

examination to explain the context in which they occurred in reference to Mr. Chapman's testimony only.

Mr. Sayers: We feel that these people's attitudes toward cockpit harmony and other attitudes are very important toward the hiring of Mr. Green. If they feel that a White man and Negro cannot operate in the cockpit harmoniously I think the Commission should know how they feel about that. I feel there is nothing to hide about that. If Mr. Bell has a personal opinion and is in a hiring position, that [fol. 347] personal opinion would certainly affect his hiring.

Chairman Miller: I think he might inquire.

A. But may I clarify that further? I did not say this was my personal opinion, nor did I say any of this was my personal opinion. I said it was a matter for consideration and concern. How I personally feel is that there should be no discrimination. I have said that, but I am not certain that everyone agrees with me who is identified with the airline industry. I would like to make that very clear. This is not a personal opinion of mine, Mr. Sayers.

Q. It is not an opinion of Continental?

A. It is not an opinion of Continental Air Lines.

Q. Just merely discussing what might be, the fears that arise?

A. Things that could happen.

Q. Things that could happen?

A. Problems that could face the people of good will who are trying to solve this problem in their efforts to solve this problem. That was the area of our discussion.

Q. Let us return a moment now to the publication. I wish we had that, but nevertheless, if this publication or a similar publication had been made, we will say, by a so-called White person, if it could have been so made, would Continental's attitude have been the same?

A. Exactly. Exactly.

[fol. 348] Q. Mr. Bell, could it be possible that Continental has two types of application blanks, one to be given to minority groups and one to White groups?

Mr. McLearn: I object to that question as scandalous in view of the sworn testimony which has been presented here this morning, scandalous and scurrilous, Mr. Sayers.

Mr. Sayers: It is not scandalous or scurrilous. The San Francisco office has given Mr. Green an application which calls for a photograph and calls for race. The application which was as late as 1957, they tell the Commission today that they haven't used that type of application since 1954. The application they present to the Commission does not have those features on it. Why should Mr. Green as late as 1957 get such an application?

Mr. McClearn: I say that the testimony was not to that effect, Mr. Chairman. The testimony was that certain of the old application forms still keep cropping up and Continental has done everything it reasonably can do to eliminate them.

Chairman Miller: Do we have the original application here?

Mr. Binkley: No.

Chairman Miller: We do not have that. It is not in evidence. I think the question was, could it be possible there are two separate applications?

Mr. White: I wonder if we could see the original?

[fol. 349] Mr. McClearn: I would be glad to make it available to the Commission.

Chairman Miller: All right.

(Original application produced.)

Mr. McClearn: May I say, Mr. Chairman, that I strongly resent the inference to be drawn from the last question, but I have no reluctance in having our witness answer it.

Chairman Miller: I understand.

The Witness: Mr. Miller, you can see where the effort to simplify and reorganize the material is intended to produce a more efficient form, more useful. Much of it we have deleted. We have given more room to work record, for example, and made other changes that we thought improved the form, and would like to say once again, Mr. Sayers, we do not have a dual form. We have only one application for employment. We have a supplementary sheet that is attached which is used for mechanics, pilots, hostesses, because it has information we are not interested in from other people, but that's all.

Chairman Miller: You may proceed.

By Mr. Sayers:

Q. Mr. Bell, again I have to ask you perhaps for a personal opinion because of your position with Continental. As their representative would you be willing to see a man or person, such as a Negro, employed by Continental as one of its copilots?

[fol. 350] A. If he was a qualified man, why not?

Q. And when you say qualified, just what does that cover?

A. Able to fly, fly well, fly safely, and be a good member of the employee group.

Q. Now, as I understand you, Mr. Green's application has been withdrawn from the eligible file?

A. That is correct.

Q. Because, primarily, of the newspaper article appearing under the Associated Press name?

A. Yes.

[fol. 351] By Mr. White:

Q. I would like to ask, Mr. Bell, even though his name was on the list, that in no way gave him ranking order on that list?

A. No. We don't have a rank order. Perhaps sometimes with applicants we are a little unfair, but I am afraid it is a first come first served basis, or maybe first come last served, in our case. We have an opening. We will pull out available applications. We don't number them or hold them in any sequence.

Q. In other words, even though you had a pilot list of, say, 10 and you were going to hire 10 people, it could be possible that one of those 10 would not be hired, that you would send out for additional pilots to come in and be interviewed, is that correct?

A. That's correct.

Q. In other words, it is possible that Mr. Green, although he was on the list, could continuously be bypassed?

A. It isn't easy, if you are in a heavy hiring drive, to overlook anyone who is eligible, but it is perfectly possible that the applications, if you need three people for a given classification, let's say stenographer, you take the first

three, bring them in, check them out. As I say, it may do some injustice to the applicants, but it is still the way we work.

Mr. White: Do you have any more?

Mr. Sayers: Yes, I do want to ask some more questions.

[fol. 352]

By Mr. Sayers:

Q. Mr. Bell, do you have anything to which you might refer that would indicate Mr. Green's standing as compared with the other applicants with regard to flying hours, aptitudes, and so forth and so on?

A. We don't give a quantitative rating, Mr. Sayers, to a pilot applicant. We don't say one man is better than another by reason of having more hours or something of that sort. We don't have more than a general "O.K." or "Not O.K." type of rating for the checked-out pilot. There is so much more that has to be done with him. You see, you only have them in the air for 45 minutes, sometimes less, and in that time, I think I am correct though I am not a pilot, conditions today would be a little different than perhaps yesterday if the sun was shining.

Q. After the flight test and the link trainer test, then what is required of the applicant, what do you screen, what do you try to determine?

A. Well, we will sometimes clear his references, depending on how far ahead we are considering people, we will perhaps have him return to his home city and he will be asked to come back again for a physical examination, maybe for another check, maybe we'll have his references cleared. Maybe we will wait until after he is hired. It is a little informal, but once we have completed the flight check self-
[fol. 353] com is a person kept on any longer.

Q. Now, in July when Mr. Green was given his tests, how many others were given tests at the same time?

A. Mr. Green, I believe, was checked in June.

Q. June.

A. I believe, and I think I had him one day off. I believe it was the 25th and 26th, not the 26th and 27th, but he and fourteen other people were checked over perhaps a weekly span.

Q. And out of the fourteen tested, as I understand, you selected only how many?

A. We selected only 4.

Q. Only 4?

A. At that time.

Q. 4 for the training class, is that what you call it?

A. Yes.

Q. Training class. Have you anything to which you can refer, or do you remember how Mr. Green compared with the 4 that were selected?

A. No, he was acceptable just as the ratings of all check pilots are.

Q. And on what did you base your selection of the 4, if Mr. Green compared with the others favorably, on what did you base your selection of the 4 and omit the fifth?

A. Well, as we have already stated, Mr. Green was qual- [fol. 354] ified to fly. We checked him, his record looked good. It would be that sort of basis for selection.

Q. And we can assume that the record of the other 4 also looked good?

A. Correct.

Q. And yet the 4 that were selected I am presuming were all White, is that correct, so-called White?

A. Yes, I presume.

Q. And yet Mr. Green who had an equal record for some reason was omitted in the selection for the training class. Now, can you tell my why was this 4 instead of this 4 selected?

A. It could be happenstance. I think it might be well to bring out, as Mr. Green mentioned, another pilot applicant named Burke, who was not included in that four, who is an able pilot, also. Though we had an August class we did not include Mr. Burke in the August class. He was included in the September class.

Q. All right. What I am trying to get you to tell me now is what did the four selected—what did they have that Mr. Green didn't have?

A. That is difficult to say. Perhaps there were four or five or six that were acceptable and the first four were used. As I have said, we sometimes train or check out for stock and we keep them in an eligibility file.

Q. Were these four that were trained or that were selected for the training class, were they hired subsequently?

A. One refused to come with us for personal reasons and only three were trained, and I don't know whether they are all flying now or not. All were furloughed in January, in any event. Some have been recalled but not very many.

Q. Now, were they furloughed because of some fault in their work or something like that?

A. Business conditions in the airline industry brought on some rather strenuous moves very quickly.

By Mr. White:

Q. Who makes the final decision on who is to be hired and who isn't?

A. It works about like this. If a pilot applicant appears to be successful, there may be 5, 6, 7 applicants, and the Operations Department, we are just talking about that particular department, needs four, they may take the first four, just say "Get these people in, hold the others until we need them." A decision for final employment is usually the department head's. We do not make the final decision here. But I am not passing the buck in any sense of the word here. It is just they need four, they found six acceptable, four will be used.

Q. Did you sit in on the determination of what four would be hired?

A. No.

Q. Did you know that Green was a Negro and was one [fol. 356] of the fourteen applicants in the June test?

A. No, I don't think I heard about it until sometime in July. Mr. Green, I believe called me sometime in July and we talked on the phone, July 8; I believe. I had heard that a Negro candidate had been screened, I wasn't sure of the date, and that he was a good pilot.

Q. Did Continental know prior to Mr. Green's appearance that he had filed cases in other States alleging discrimination?

A. No, sir. You mean his appearance in June, June 25 or 26? No.

Q. The only information you had was this Albuquerque News clipping?

A. Correct. We verified the facts in the clipping before making a decision.

By Mr. Sayers:

Q. About what date did this clipping appear, do you remember?

A. Yes, Mr. Sayers, it was the August 4 issue of the Albuquerque Journal.

Q. And that would have nothing to do with your not selecting Mr. Green for this first class that was to come up in July?

A. We didn't need as many as we checked out. That was the size of it.

By Mr. White:

[fol. 357] Q. Does your check pilot make recommendations other than the flying ability of the candidate?

A. No, he doesn't, although if he finds the individual surly in the cockpit even though he might be able to fly, or unable to follow instructions quickly, he will make such an observation.

Q. So his job is primarily the check-out of the man's ability as a flier?

A. Does he have it or doesn't he?

Q. Then further interviews must be made in regard to, say, a man's character or personality and so on?

A. Yes.

Q. In Green's case, who made those determinations?

A. In Green's case he had his military record with him, which certainly is as excellent a character reference as you can find. There was no heavy screening of Mr. Green's application following his successful check-out.

Q. Well, the four applicants that were selected, did any of those have further interviews than Green?

A. Not to my knowledge.

Q. In other words, they had just been checked out by the chief pilot, and could have had then a casual interview by Mr. Sorby?

A. Yes.

Q. In other words—

[fol. 358] A. Told to go home, then subsequently received a wire saying, "Report for class on such-and-such a date, arrive a day early for physical examination."

Q. We have a problem here of five qualified pilots. You picked out four and one wasn't chosen. Now certainly I would like to follow that vein of thinking. What did these four have that was superior to Green, or we could put it another way, did Green have something that the other four didn't have that disqualified him?

A. Not necessarily, Mr. White. I think I should make this clear. We have used these numbers, these classes, and the number is considered as almost separate compartments. Once we, and I am sure any other airline, start a hiring drive or is hiring aggressively for any classification, the grapevine carries it all over the country and you have a steady flood or roll of applicants, you screen them more or less constantly, and my cutoff points have been those that have been considered up to the time that a class was formed, but the screening process is almost continuous unless you are just flatly not hiring and a pilot appears and says, "I want to be checked out" we won't take the time nor money to do so.

Q. Have you got a record to show that the other four applicants were screened and flight checked ahead of Mr. Green?

A. Not necessarily. It was all more or less the same. I mentioned one, Mr. Burke, whom Mr. Green met, who was [fol. 359] checked, I think, on the same day.

Mr. McClearn: Excuse me. I think the record will show the name was Bryant.

The Witness: Bryant, excuse me.

Q. Specifically, why wasn't Mr. Green hired?

A. We didn't need that number of pilots.

Q. I mean why wasn't he one of the four?

A. Well, why wasn't Mr. Bryant, for that matter? I don't mean to quibble, Mr. White, I know how we work. A pile of eligible people, they could be hostesses or anything, we take the first four.

Q. I am looking at the percentage. We have one Negro that wasn't hired, the rest of them were whites. Looking at it percentage-wise, naturally you could assume there would be more Whites than colored people at that particular time hired. But here I understand you have had only one Negro applicant so far and he was not hired, which gives you a 100 percent bad batting record, you might say. That is what I want to know, why specifically Green wasn't hired. We are not employment agents, you understand that.

A. I know that, Mr. White.

Q. This Commission is not around trying to get people jobs, but certainly we feel that if a man is qualified he should be hired. That is our basis of determination. Now, you have already stated that he was qualified.

[fol. 360] A. That's right.

Q. Now we want to know why he wasn't hired if he had the qualifications?

Mr. McClearn: Mr. Chairman—and I don't mean to try to cut you off, Mr. White—but that question has been asked about six times and I think Mr. Bell has answered it fully to the best of his ability.

Chairman Miller: I think he has answered the question. It is a repetitious answer. Do I understand there were five of the fourteen?

The Witness: I believe there were six.

Chairman Miller: Six?

The Witness: I believe there were six.

Chairman Miller: And the other eight were found not qualified at that time?

The Witness: Yes. We reviewed the records that we had and so advised them.

Chairman Miller: What was the figure, was it six or five?

The Witness: Well, it is my recollection that 14 people were considered for this group. It was the first of a hiring drive. Of the 14, 6 were found to be qualified. We didn't know about all of them until sometime after Mr. Green appeared and then left. That was why we simply advised them all that they were not included in this July class. We

[fol. 361] didn't want to cut them off completely and have them perhaps go to another line if they were suitable. We didn't give them a flat rejection.

Chairman Miller: But eventually out of the 14, six were found qualified?

The Witness: Were found qualified.

Chairman Miller: And four placed in the pilot training class?

The Witness: Correct.

Chairman Miller: Was Bryant the sixth one?

The Witness: He was included in the six.

By Mr. Sayers:

Q. Mr. Bell, do you have anything to which you can refer that would indicate how many flying hours Mr. Bryant had?

A. No, not offhand I don't. His records, of course, would show that, or his log book.

Q. Do you have anything or do you remember how he compared as against Mr. Green, as far as qualifications are concerned?

A. They compared equally favorably, to my knowledge, as did all of those included in this one group. The qualitative valuation of a pilot has to be very limited for the reasons I mentioned, time, weather, as Mr. Green well knows or Mr. Cramp far better than those of us that aren't pilots. A man can look good 9 days out of 10 and on the 10th day runs into a situation that can't be fixed. That [fol. 362] is why the copilot is on probation for one year and subject to discharge without question at any time during the one-year period. He has no recourse to any grievance procedure, no argument whatever. We just don't think he is going to cut the mustard and out he goes. I am sorry, I will be more careful of words here.

You would like me to be able to say one man was 82 and another 83. We don't have such a measurement, and it would be very foolish. I am sure all pilots would concur in this, to have any sort of a pinpointed evaluation at the time of one check flight.

Q. Mr. Bell, I want to ask you this, perhaps you know.

perhaps you don't know. Do you know of any airlines that are presently employing Negro pilots?

A. No, sir.

Mr. McClearn: I don't believe that is within the area of this inquiry.

Chairman Miller: No.

Mr. Sayers: I believe that's all.

Chairman Miller: Any further questions? Let me clarify something, Mr. Bell. At the time of, well, last June or July, whenever it was Mr. Green's qualifications were admitted, he was placed on call, at least in the file, he was eligible; the factor that caused Continental to withdraw his name as one eligible was solely the matter of the adverse publicity?

[fol. 363] The Witness: Yes, sir.

Chairman Miller: And that didn't develop until the fall, September I think you said or August?

The Witness: August 6 I think we were made aware of this.

Chairman Miller: Yes, August.

Mr. McClearn: I wonder if I might ask one or two.

Chairman Miller: That's all right. Let's finish with Mr. Bell before the noon recess.

Redirect examination.

By Mr. McClearn:

Q. In your examination by Mr. Sayers, you discussed again this subject of the possible problem of cockpit harmony. How did that subject arise, Mr. Bell, in the course of the conversation, why did it come up?

A. Well, you have pilots from all over the country flying in any airline.

Q. No, I am sorry, perhaps you misunderstand my question. Did you initiate the question with respect to cockpit harmony?

A. Possibly, well, the answer to that would be Yes, because I was asked what sort of problems might conceivably arise in the industry.

Q. In other words, you got into the area of cockpit har-

mony discussion in response to an inquiry from Mr. Chapman, is that correct?

A. Yes, what problems would arise.

[fol. 364] Q. That wasn't in connection with your discussion about Mr. Green specifically?

A. No, Mr. Green's case had been discussed and we were, as I say, just spinning our wheels.

Q. In connection with your determination not to further consider Mr. Green, which you have stated was based upon the publicity he received nationally, would you have reached the same result with respect to, let's say, Applicant Bryant who was at that time an applicant, was he not, in early August?

A. That question was asked and the answer is definitely Yes.

Q. In other words, if Mr. Bryant had become involved not in a racial discrimination problem but if for any other reason he had achieved the same sort of national publicity, what action, if any, would you have taken towards his application?

A. Terminated it.

Q. Just as you did Mr. Green's?

A. Just exactly.

Q. And by the same token if Mr. Green had become involved in national publicity not having to do with his race, what action, if any, would you have taken?

A. The same.

Q. The same action that you did take, is that correct?

A. Yes. May I add one word. We have over the years terminated people who were being plagued by bill collectors. [fol. 365] They might be fine pilots, they are in training, but we have found it necessary to release them. Marital difficulties of one sort or another that hit the press.

Q. All right, sir. And you did testify, did you not, that applicant Bryant whom Mr. Green has stated was interviewed on the same day that he was and who was found to be equally qualified by Continental, was selected for training in the September 1957 class, is that correct?

A. Yes. He was part of this stockpile of eligible people.

Mr. McClearn: That's all, Mr. Chairman.

Chairman Miller: Would that be true regardless of whether or not the pilot was asserting, conscientiously or rightly, the thought he had, even if it were not in the area of discrimination or a breach of contract or personal injury suit which resulted in a great deal of publicity?

The Witness: I think, Mr. Miller, this is in all honesty a personal opinion, but the answer would have to be yes. If you have two pilots of equal qualifications, one receives some publicity, fairly or otherwise, I am afraid the one who had not, who was equally good, we would use. He is such a unique person in the public eye.

Chairman Miller: Well, does that affect the airline business, I mean what would be the reason for that, I mean excessive publicity, we will say.

[fol. 366] The Witness: Personal problems that he might have that would distract from his flying concentration would be one angle.

Chairman Miller: Reflecting upon his ability as a pilot?

The Witness: It would be that.

Chairman Miller: Does the matter of customer relations enter into the selection of the pilot?

The Witness: Customer relations?

Chairman Miller: Yes, I mean the physical appearance of the pilot?

The Witness: Yes, he comes through the cabin quite often. We encourage this. He talks to the passengers, often greets them at the steps, some airlines. He is an important figure in their eyes.

(Commissioner Manzanares entered the hearing room at this point.)

Chairman Miller: Was that considered in Mr. Green's case, do you know?

The Witness: Mr. Green's appearance speaks for itself. He is a nice looking person.

By Mr. White:

Q. Mr. Bell, do you discharge pilots or do you provisionally discharge them subject to appeal by their grievance committee?

[fol. 367] A. A probationary pilot, Mr. White, has no right to have a grievance procedure at all.

Q. Say one of these pilots was involved in one of these bits of notoriety you have been talking about, do you fire him or provisionally discharge him?

A. We will discharge—well, we have the right—we make a distinction here—we have the right to suspend and then bring charges or we have the right to fire, and when we suspend and bring charges the injured employee then has certain recourse to grievance machinery.

Q. He must have just cause?

A. Just cause, that's right.

Q. In other words, the arbitrator may say, then, you had no right to fire that employee?

A. That's right. He can be reversed.

Q. Have you ever fired one for a similar circumstance?

A. We have discharged probationary pilots the minute there is any slight hint of probation.

Q. Let's get off probation.

A. All right. You have a full seniority pilot. Yes, we have.

Q. Was it upheld by an arbiter?

A. Yes. We haven't for—there has been no similar case, to my knowledge, but there has been publicity that was not favorable to the pilot or to the airline that has caused us to [fol. 368] terminate a pilot and have his termination upheld.

Q. Can you relate what that was, I mean was it offensive to the morals of the community or such as that?

A. Automobile accident, drinking.

Q. You wouldn't compare that to a man asserting his rights under law?

A. No, I wouldn't, Mr. White, but as I said to Mr. Miller a moment earlier, if you had two people, one of whom who has not had a problem involving those rights and one who has, we don't attempt to be a judge but we do prefer, if the qualifications are equal, to use the one who has not.

Q. In your job as Vice President in charge of Personnel, is that a policy-making position?

A. To a limited extent a policy formation or recommendation, I do not make final policy.

Q. But your personal opinion would have a great deal of weight on those policies?

A. Yes, better be able to prove it.

Q. I am not trying to trap you on anything.

A. No, I know you are not.

Q. But when you were talking about the problems the airlines would have in general discussion with Mr. Chapman, cockpit harmony and—

A. Might have.

Q. I am just wondering if in the determination or selection of four out of five pilots, if those considerations wouldn't lend some weight to the hiring of an individual.

A. Not to my knowledge. We have attempted not to discriminate. We will welcome all applicants for any position, regardless of race, creed or color.

Q. Well, then, you would say that there would be no problem in hiring a Negro pilot?

A. The problem would not be such as to cause us to refuse to consider him or hire him.

Chairman Miller: I think maybe what Mr. White is asking, is there any specific factor in a Negro, the color of his skin or anything else, because he is a Negro, that would disqualify him in your consideration?

The Witness: No, nor in the consideration of Continental Air Lines.

Mr. Sayers: I should like to ask one more question, if I may.

Chairman Miller: Yes.

Recross examination.

By Mr. Sayers:

Q. Have you notified Mr. Green yet that he is no longer being considered?

A. No.

Q. He has not yet been notified of that?

A. No.

Q. How many of the minority group do you have employed at the Denver station?

Mr. McClearn: Well, now, excuse me. I think there would be a further definition required there.

Chairman Miller: Yes, I think you would have to differentiate.

Q. How many Negroes do you have employed at the home office here in Denver?

A. I honestly don't know, Mr. Sayers.

Q. Do you have any?

A. I don't know that. I believe we have some.

Q. In what type of work, if any?

A. We have one I know of who is employed as a trusted messenger. We may have mechanics. We have had office employees. To be very honest with you, we don't have very many candidates for employment. Every now and again Mr. McKinney, with whom you are acquainted, of course, refers some to us as an opening. We have made every effort to place them.

Mr. Sayers: That's all.

Mr. McClearn: In this connection, if I may.

Chairman Miller: Yes.

Redirect examination.

By Mr. McClearn:

Q. I note from the Commission's annual report that certain other minority groups are indicated, among whom were Spanish-American, persons of Japanese descent, and Jewish, persons of the Jewish faith. Will you tell the Commission [fol. 371] whether or not Continental Air Lines employs persons from those other so-called minority groups?

A. We will employ anyone who meets our job qualifications, whether Nisei or Spanish-American.

Q. Do you have such persons in your employ?

A. Yes. I don't know the numbers, but we do have them.

Q. Now, Mr. Bell, in answer to Mr. Sayers' question, if he asked you to go and find out how many colored persons you have employed or how many Spanish-American persons you have employed, how would you do so, or could you?

A. I don't know how we would do it without a question-

naire and I would certainly hesitate to do anything like that.

Q. Is there any information in your files, your personnel files, which indicates the race, nationality or religion of any of your employees?

A. No, sir.

Q. And this would, of course, be with the exception of the persons who were employed under the old form?

A. On the old form, of course.

Mr. McClearn: That's all.

(Witness excused.)

Chairman Miller: If there is nothing further, then, we will recess until 2 o'clock.

(Whereupon, at 12:15 p.m. a recess was taken until 2:00 p.m. of the same day.)

[fol. 372]

AFTERNOON SESSION

2 p.m.

(Mrs. Paul Budin was absent from the afternoon session, Mr. Gene Manzanares was present.)

Chairman Miller: Are we all here? Did we finish with Mr. Bell?

Mr. McClearn: Yes.

Chairman Miller: All right. Your next witness?

Mr. McClearn: The Respondent rests, Mr. Chairman.

Chairman Miller: Respondent rests.

Mr. Sayers: Mr. Chairman, I would like in rebuttal to call Mr. Green for just a question or two.

Chairman Miller: As many as you like.

MARLON DEWITT GREEN, having been previously sworn, was recalled and testified as follows:

Direct examination.

By Mr. Sayers:

Q. Mr. Green, you have heard testimony this morning concerning the newspaper article that you gave to the A. P. Do you have a copy of that article?

A. I would like to correct in my answer that the article was not given directly to the A.P. by myself. It was given directly to a reporter of the Lansing State Journal, Lansing, Michigan. He wrote his article based on my information, and a copy of his notes and his final article was submitted to the Associated Press, and the article, to my knowledge, [fol. 373] the article which appeared in the Albuquerque paper must have been a result of the release by the A.P. based on the Lansing State Journal information.

Mr. Sayers: May I have this marked Complainant's Exhibit 11?

(Complainant's Exhibit No. 11 was marked for identification.)

By Mr. Sayers:

Q. Mr. Green, I ask you to look at Complainant's Exhibit 11 and tell us what it is.

A. This is a copy of a news article which appeared in the Lansing State Journal, issue of Sunday, August 4, 1957, written by Mr. Frank Hand.

Q. And is this article based upon information that you gave to Mr. Frank Hand yourself?

A. That is correct.

Q. And the articles that you have heard discussed this morning about being in the Albuquerque paper, would it be likely to be based on this same information?

Mr. McClearn: Please note our objection.

Chairman Miller: Yes. Read the last question, please.

(Question read.)

Chairman Miller: I think that is a little broad. I think if you confine it more specifically. You might ask him if he is familiar with the Albuquerque article.

[fol. 374] Q. Mr. Green, are you familiar with the article that appeared in the Albuquerque paper?

A. I have not seen this particular article. However, on August 4 this same information, based on this article, was carried by local newspapers in numerous cities throughout the country, to my knowledge. There were possibly more than I know of.

Mr. Manzanares: Was there a clipping out of the Albuquerque paper submitted this morning?

Chairman Miller: No.

Mr. McClearn: We will stipulate that the Albuquerque article was similar, at least, in nature to the Complainant's Exhibit No. 11.

Chairman Miller: All right.

A. I can offer here as information that I have in my possession now a copy of this same information which appeared in the Hartford Courier, and I would guess that it would be very similar in nature to the information which occurred in the Albuquerque paper, assuming that they are all based on this article.

Chairman Miller: I assume the stipulation is to the effect that the article in the Albuquerque paper is in effect similar to this article.

Mr. McClearn: That is correct, sir.

Mr. Sayers: We would like to offer this.

[fol. 375] Chairman Miller: It may be admitted.

(Complainant's Exhibit No. 11 was received in evidence.)

Mr. Sayers: Shall I read it?

Mr. McClearn: It is before the Commission.

Chairman Miller: The Commission can read it.

Mr. Sayers: I believe that is the only thing I wanted to bring out with Mr. Green.

Mr. McClearn: No questions.

(Witness excused.)

COLLOQUY

Mr. White: Is the Chief Pilot going to be back this afternoon?

Mr. McClearn: No. We have rested our case, Mr. White.

Mr. White: I would like to talk to him as a witness.

Chairman Miller: Is he available?

Mr. McClearn: I don't know whether he is available or not. I might say for the record that at Mr. Chapman's request we brought Mr. Cramp to the hearing and he was present yesterday and this morning, as the Commission knows. When the Complainant rested his case we saw no reason to retain Mr. Cramp. The testimony which Mr. Green gave yesterday concerning his conversations and interview with Mr. Cramp was, so far as we are concerned, truthful and accurate, and there was no need for us to present cumulative testimony on the same point.

[fol. 376] Chairman Miller: He wasn't subpoenaed, was he?

Mr. McClearn: He was not subpoenaed.

Chairman Miller: Unless there are some further questions you may have of Mr. Bell.

Mr. White: How about Mr. Sorby, can we talk to him?

Chairman Miller: You are not planning—they have rested. Is there any objection to Mr. Sorby being sworn?

Mr. McClearn: Only insofar as, Mr. Chairman, we think we have a right to rely upon the complainant's presenting its case. Certainly Mr. Sorby has nothing to hide, but I would think it would be unusual to reopen the hearing after both parties have rested except for rebuttal testimony.

Chairman Miller: Well, I don't think both parties have rested, I mean the rebuttal hasn't.

Mr. McClearn: No, the rebuttal is open, of course.

Chairman Miller: You see, we are not bound here specifically by the rigid rules.

Mr. McClearn: I understand.

Chairman Miller: There may be some questions in the minds of some. Maybe Mr. Bell can answer these questions.

Mr. McClearn: If the Commission desires to call Mr. Sorby, he is sitting in the room and I have no objection to his being called.

Chairman Miller: If that is agreeable to you, Mr. White, if you have some questions.

[fol. 377] Mr. White: Isn't he closer, actually, to the Chief Pilot's information than Mr. Bell would be, normally? I mean in regard to the hiring of these people. I am interested in continuing the conversations on why these four particular people were hired and who did the actual hiring and upon what basis. I am not satisfied in my own mind yet that these four showed superior qualifications to Mr. Green, and that is one thing that we have to determine in this hearing.

Mr. McClearn: I think that the testimony on that point is clear, Mr. White: There is no contention by the company, and I will so stipulate if you desire, that the four who were selected had qualifications superior to the two qualified pilots who were not selected. I think that that testimony is just as clear as it can be and he can admit it if that is necessary.

Chairman Miller: I think what Mr. White has in mind, if I may, is the question of comparative qualifications without their being qualitative, as to why a decision was made that these four are superior to the other two, who are also qualified, eliminating the eight who were not qualified. I mean, out of the fourteen, 6 were found to be qualified and 4 apparently were found to be better qualified than the remaining two, the question being, I am sure, in the minds of some of the members of the Commission, what is the basis for saying that they are better qualified than the two who [fol. 378] apparently were qualified.

Mr. McClearn: If I recall Mr. Bell's testimony on the point, there was no particular reason for selecting any four out of the six, that once a pilot was considered to be qualified for employment he was just qualified for employment and whether he was selected for the next class or for subsequent classes was simply a matter of random selection.

Chairman Miller: Well, that's the factor that still remains hazy, I think.

Mr. White: Isn't that poor business practice? If I were an agent hiring, I think I would attempt to hire the best qualified, and that's the basis that we have to judge this case on.

Mr. McClearn: Well, my point, Mr. White, is this, that you will have to draw your own conclusions from the evidence, but I don't think it is within your prerogative to challenge company policy unless it violates a law, and I think the testimony in the area into which you are inquiring has been full and complete.

Chairman Miller: No, so far as policy is concerned, that is correct, but I think what the inquiry relates to is an analysis of those factors which enter into the decision in determining that A or B are better qualified than E or F. In what respects are they better qualified? When we know that six are qualified to do the job, what are the particular [fol. 379] factors affecting E and F which say they are not as well qualified as A, B, C, D?

Mr. McClearn: That's right, Mr. Miller, and—

Chairman Miller: Excuse me. I don't think this is a matter of, maybe in a sense it is company policy, and yet it is factual, bearing upon the issue.

Mr. McClearn: It was my understanding of Mr. Bell's testimony that once you reach the point of minimum qualification, in other words, that a pilot was qualified to be employed, that there was no basis for selection out of the so-called pool of qualified pilots.

Mr. White: He also testified that one had more than the minimum qualification, in fact, he had more than that number that was disqualified; he said he had been a senior pilot with maybe 7,000 hours and they felt perhaps he shouldn't be hired because he might not take orders as readily, being a senior pilot at one time.

Mr. McClearn: But he is not in this category, Mr. White. He is one that is rejected. He is not kept in the so-called employable pool.

Mr. White: But he met all the minimum qualifications.

Mr. McClearn: No, if you will, he failed—

Chairman Miller: He over-met them.

Mr. McClearn: He over-met them, but he was still not minimally qualified.

[fol. 380] Chairman Miller: I think that's right. Is there any objection to asking Mr. Bell these particular factors?

Mr. McClearn: No.

Mr. White: I would like to ask Mr. Bell or Mr. Sorby,

either one who would like to answer this, if Mr. Green showed superior qualifications over the four that were hired in certain areas, certain fields, of his test.

Mr. Bell: No such evidence available. I think that maybe the best way of explaining to the Commission about what we are doing here is similar to the admission of a student at college. He meets certain requirements and he is admitted. Whether or not he graduates is something else again. During the training period there is continuing evaluation of his performance, but you are either in or you are out on the basis of a flight check, and no great stress is placed on the flight check other than coolness and so on. He is put through certain maneuvers, but as you can see, I mentioned it earlier, your flying conditions, VFR, are entirely different than if it was purely visual flying. So you can't do any more than say, "This individual can keep it straight up and the other one can't."

Then you get a pool of these people available. We will in a sense take some, perhaps, who are immediately available; we wouldn't consider somebody who said he wasn't available for a month. But you don't have the sense of a [fol. 381] qualitative evaluation which I think is what you are looking for, Mr. White, that this man is good on take-off, he is better than another man on a landing, or something like that. It isn't quite done that way.

Chairman Miller: Who made the final decision as to the hiring of the four?

Mr. Bell: I think it is safe to say that as we reached for the first—or the first four in a pile were taken and that's all we were going to use. The subsequent classes might be larger, but all that we had room for and intended to train at that time would be four.

Chairman Miller: I mean what individual in the Continental organization would say with authority, "These are the four that we want"?

Mr. Bell: Well, it might be—we are still after, I say, a qualitative evaluation; I want to be somewhat careful of that. Which of the four eligible or six eligible will we use? It might be the first four. And it might be the Director of Flying, I am using titles not current any longer, it might be the Vice President of Operations, it might be verbal

instructions to our department to call in the first four people, the first three or whatever, "let's get them in training." It is somewhat informal.

Chairman Miller: Do you know in this case who made the decision with respect to the selection of the four?

[fol. 382] Mr. Bell: No, sir, I don't know exactly who made the decision

Mr. White: Mr. Sorby, did you make it?

Mr. Sorby: No.

Mr. Manzanares: He hasn't been sworn yet, George. Before we get off on that, may I ask Mr. Bell a question on that? Without questioning the policies of eligibility or the selection, I want to get away from who decides which ones are eligible. We will assume six of them are eligible for pilot training and four were to be selected. Somebody has to make the selection. Your method I don't particularly care about, but there has to be some method. Do you throw them up in the air, throw the names up in the air, and the four that you catch in your hat are the ones, or what? There has to be some selection, isn't there, in an organization like that?

Mr. Bell: Well, I don't want to sound too haphazard, but it is quite informal. If you have seven openings and ten available applicants, it might be—we will be asked, "How many do you have? Bring in seven." It might be the first seven. They might be in any order. They might be out of order. The last seen might be the first called in rather than the first seen. Unless a person is clearly not acceptable, we've just got them in a pile.

Mr. Manzanares: You say we don't want that guy or we do want this guy and any other six applying that are [fol. 383] available?

Mr. Bell: The reasons for this is the latitude of the training period where we will dismiss people out of the classroom.

Mr. Manzanares: The next step, you figure something else will happen in that next step?

Mr. Bell: Yes. And, of course, during their probationary period as pilots, which is one year. You are familiar with all the rules of probation.

Mr. Manzanares: There is no selection procedure, as such, by the company?

Mr. Bell: Nothing particularly formal or organized. You have got a pool of people—call in four, call in five, call in six.

Mr. Manzanares: What happens then? An order has been given to someone, I assume, to bring in four. Is it up to that person, then, to decide which four he brings in?

Mr. Bell: We might be told to bring in four. We might have all the applications in our own office. They might have them and say, "Bring in A, B, C and D." We will send the rest back and call them later. There isn't any selection in the sense if there is any doubt about a pilot, that's it.

Mr. Manzanares: Sure, I understand.

Mr. Bell: So all others are treated equal until they prove they aren't equal.

[fol. 384] Mr. Manzanares: Until you select, and then there doesn't seem to be a pattern of selectivity at all. They are able up to that point.

Mr. Bell: They either have made the grade or they haven't, and then during the training and selection period, that's where your real selection comes in.

Mr. White: Have you got that list so we can see whether Mr. Green was either fifth or sixth, have you got that list at all?

Mr. Bell: No, Mr. White, we haven't any list like that.

Mr. White: Well, you had to keep their references, didn't you?

Mr. Bell: Yes, but there isn't any rank order in the list. We know who was involved at that time.

Chairman Miller: In other words, six were eligible and eight were not, and the six were not in order of any priority or sequence?

Mr. Bell: That is right.

Chairman Miller: When you say they told somebody to call in four, whom do you mean by "they"?

Mr. Bell: They would be the Operations Department. It could well be the clerk responsible for signing people to the class. We know how many requisitions there are. We know how many class positions there will be. That's all.

[fol. 385] We are just told to bring in four, five, six.

Mr. McClearn: I wonder if I couldn't add something to this. In the Operations Department, for example, there are certain people who have responsibilities who might say, "Bring in X number of pilots for training, is that correct?"

Mr. Bell: Yes.

Mr. McClearn: And that someone in the Operations Department would communicate with the Personnel Department, but the person in the Operations Department who communicates with personnel is not the so-called policy-maker, it is one of his subordinates?

Mr. Bell: Could be anyone. All we are waiting to hear is how many of these that have been tested and tried out they want, and how soon until we can arrange for physical exams, that's all.

Mr. Manzanares: Then we are past the place where Operations needs X number of pilots and they make the request of personnel; now we are to that point who in personnel, or rather, whoever makes the selection of personnel, what procedure do they use?

Mr. Bell: Take four, if you can conceive of a folder—

Mr. Manzanares: If you have a list you might take the first four or last four?

Mr. Bell: No order.

[fol. 386] Mr. Manzanares: That's the way it is.

Mr. McClearn: Let's develop that a little bit along Mr. Bell's thought, I think.

You don't have a list, as such, you have stated?

Mr. Bell: No.

Mr. McClearn: What do you have, you have a file?

Mr. Bell: A folder.

Mr. McClearn: Of eligible applicants, don't you?

Mr. Bell: That's right, we have a folder of eligible applicants.

Mr. White: Then is it possible for whoever goes into that folder to read the names and then discriminate on that basis?

Mr. McClearn: Is that question clear to you?

Mr. Bell: No.

Mr. White: All right. Say somebody has to go into that

folder. Now, so far we don't know who does that, you haven't given us the name that actually goes in the folder.

Mr. Bell: I might do it myself.

Mr. White: Is it possible at that time, knowing Green is a Negro, going into that folder to pick other than his name on that basis?

Mr. McClearn: I think the question answers itself, of course it is.

Chairman Miller: Yes, that is possible, I would answer [fol. 387] it.

Mr. Manzanares: You have no method of preventing it, either, do you?

Mr. Bell: No.

Mr. Sayers: I should like to ask Mr. Bell a question if I may. Was Mr. Green one of the six who was in the folder in the first place, would you say?

Mr. Bell: Yes, I would say that. I would say that we had—Mr. Green was included with a number that we had not yet made up our minds about, that we subsequently disqualified completely.

Mr. Manzanares: Have you always hired like that?

Mr. Bell: It does sound a little—

Mr. Manzanares: Sounds rather haphazard.

Mr. Bell: Sometimes it is.

Mr. Manzanares: I don't know anything about the flying business, but it sounds rather strange if it has always been that practice.

Mr. Bell: Well, we are small, to begin with.

Mr. Manzanares: I realize those guys are supposed to be good men, all six of them, so you are pretty sure anyone you select of those six is going to be good from a qualification standpoint, but—

Mr. Bell: Our job is done once we have the eligible people produced, found to be eligible, whatever the job might be.

[fol. 388] Mr. McClearn: Mr. Manzanares, I am afraid you are putting us in a position which we don't like to be, of classifying our pilots as bodies, eligible bodies or ineligible bodies.

Mr. Manzanares: I don't mean to. I can't find a point from which you are operating according to any kind of a

procedure, although you don't have to. As I mentioned a little while ago, you could throw the names in the air. It is your business to select in any manner you see fit. But as yet I haven't been able to find a procedure of selection in any way whatsoever.

Mr. Bell: It is not a refined procedure. I think as we get larger we are going to have to make some changes, there is little doubt of that. I have been connected with a company employing over 100,000 people and I hesitate to think what might happen if we ran on that basis with that company, but as it is, being located where we are, Continental up to now has been very fortunate in having available all the applicants it needs for a job. Let's hope it continues. We have the advantage of our location and size, and the fact that our pay scales are competitive, regardless of the classification of work.

Mr. White: This clerk or bus boy, whoever it might be you send to the files, at this point couldn't that picture that is attached to that application definitely act as an instrument of discrimination?

[fol. 389] Mr. McClearn: Again, I think it answers itself. In this instance there was no picture. If a man was going to discriminate because he was a Negro, of course he could, Continental could or anybody else to whom Mr. Green applies.

Mr. White: Another question. Your chief pilot, or check pilot—I keep getting the terms mixed—check pilot. Has he done that job for some length of time?

Mr. Bell: Many years.

Mr. White: He is familiar, then, with both application forms, the new and the old?

Mr. Bell: I presume so, though he has seen very, very few of the old ones.

Mr. White: He knows your new hiring practice or new application form omitted "race" on it?

Mr. Bell: I have the feeling he never would have noticed it at all. The changes were made by us quite a number of years ago for simplicity and efficiency, and to get rid of useless information.

Mr. White: But he did pick out that one item that wasn't filled out and specifically requested—

Mr. Bell: It was an incomplete form.

Mr. White: But he knew the difference between the two forms, or should have, anyhow.

Mr. Bell: I have a feeling that he didn't. I think any one of us that are used to applications might have, but I [fol. 390] don't know that he did at all. I think he just saw an open blank.

Mr. White: He should know the policy of the company by this time, though, that it was useless information that had been dropped because it was superfluous.

Mr. Bell: Well, being useless we certainly didn't put out a bulletin to the effect that we were not including that on an application. We said, "Get rid of all old applications." One place it wasn't done. Mr. Green unfortunately found it.

Mr. Manzanares: I would like to get back to this other again. This is Complainant's Exhibit No. 9, the General Policy Plan of the Continental Air Lines. Under the "C" heading, "Responsibility for selection", it says this "The Department Head or his designated representative will select from the applicants referred to him by the Employment Manager the individual best suited for the position." Now, that says that there is somebody who makes the selection.

Mr. Bell: You might look at that as being a secretarial position or any kind of a job. That doesn't just relate to pilot employment. We have one job open, we send five applicants, they meet our approval or they wouldn't have been sent for. He approves, then, the one he wants. Pilots, it is in slightly larger numbers when the time arrives that we are employing pilots.

[fol. 391] Chairman Miller: I think what may be a factor here which the Commission is groping for, the answer one way or the other, is to pinpoint the particular individual who made the decision to select these four and why he selected those four.

Mr. Bell: I realize what they want. I am having difficulty explaining how it could work as it does where you have got a pile of X number of suitable people.

Chairman Miller: Excuse me, Mr. Bell.

Mr. Bell: Oh, I am sorry.

Chairman Miller: We are talking about these particular six and what was the fact with respect to that situation last June or July when the six were there. Who was the man who said, "We want four", and who was the man who picked the four?

Mr. McClearn: Mr. Chairman, hasn't that been answered by saying, you just don't know?

Mr. Bell: I don't know.

Chairman Miller: That is one of the disturbing factors. That leaves it rather vague.

Mr. McClearn: I wonder if I could develop that a little bit?

Chairman Miller: Yes.

Mr. McClearn: You have testified that during at least several of the months of 1957 this process apparently took place, the process of selection of some out of a larger group [fol. 392] of qualified applicants for training, is that correct?

Mr. Bell: Yes.

Mr. McClearn: And if I further understand your testimony, this perhaps has happened at least in the past years over a period of time?

Mr. Bell: Yes.

Mr. McClearn: And is it my further understanding of your testimony that who performs this so-called selection process for any given month or any given period is not the same person from time to time?

Mr. Bell: No.

Mr. McClearn: That was my thought, Mr. Miller.

Chairman Miller: And there, of course, is nothing in the record to indicate who did it this particular time. You say you don't know.

Mr. Bell: Mr. Miller, we weren't building a record to defend ourselves in a discrimination case, I think that should be brought out here. We were following our normal method of operating.

Chairman Miller: Mr. McClearn, does Mr. Sorby have any information on that point?

Mr. McClearn: Not to my knowledge, but if the Commission would like to interrogate him I would have no objection.

Chairman Miller: We would be very happy to if it is [fol. 393] agreeable to you. We will swear Mr. Sorby. I take it it is agreeable if the Commission inquires.

Mr. McClearn: Yes.

KENNETH C. SORBY, was sworn and testified as follows:

Direct examination.

By Chairman Miller: ○

Q. Your name?

A. Kenneth C. Sorby, S-o-r-b-y.

Q. Your occupation?

A. Employment Manager and Employee Relations. Official title is Manager, Employment and Employee Relations.

Q. Of Continental Air Lines?

A. Right.

Q. Were you so employed last year at the time that the complainant here applied at Continental?

A. That's right.

Q. Did you have any particular dealings with Mr. Green at that time?

A. Particular dealings? No, I wouldn't say so, Mr. Miller. I met him, as has been brought out here earlier. I handled this application from time to time right along with the applications of other personnel we were considering for employment.

Q. Did you have occasion to handle his application subsequent to the time he was put upon the eligible list?

A. I would say I did. As a rule, the applications of [fol. 394] those individuals approved for employment are returned to our office and I or possibly others in the office, clerks in the office, would have handled the application to get them in the proper files, etc., yes.

Q. Did you have anything to do with the selection of the four out of the six eligible applicants last summer for this particular copilot training school?

A. Insofar as designating which people were to be selected, no.

Q. What, if anything, did you have to do with it, those six applications?

A. Well, the things that I have to do with them, of course, involve directing the clerks in the office to handle reference checks, investigations, history, and so forth, the handling of the files. I do not recall specifically directing anyone to handle an investigation of Mr. Green's application, but there are an awful lot of applicants that I do handle through the period of the year, and to fish one out in detail I am sorry I couldn't say.

Q. Do you know who did handle the procedure of the selection of the four out of the six?

A. No.

Chairman Miller: Have you any other questions?

By Mr. White:

Q. Do you have any personal knowledge of Green filing [fol. 395] cases in other States alleging discrimination before his June appearance?

A. No.

Q. Did you know that Green was a Negro before he came?

A. Before he came to Denver?

Q. Yes.

A. No.

Q. When the four pilots were needed for the schooling, is it your Department that the information is requested— Well, let's put it this way: If there are four pilots needed, it is up to your department to furnish those four pilots, is that correct, that information request comes to you?

A. It is up to our Department to supply likely applicants for positions in the numbers necessary to give the operating departments a chance to make a selection, to run through interviews, to conduct tests, etc.

Q. Does that request come directly to you over your desk?

A. Yes, I get the orders from the Operating Departments indicating that they need so many personnel in such and such classifications, yes.

Q. Who do you give that order to go select the four?

A. I keep that. It is retained right in my section.

Q. No, let's put it this way: After you get this order for four pilots and somebody has to give an order to go [fol. 396] pull four applicants' files for training, now, who is immediately responsible to you for that selection? You just don't hand it to a girl who sharpens pencils in your office or something? I don't think you have made that record on safety in your airline that way, I am sure of that.

A. Let me stray away from this pilot thing for a moment. In my position I handle employment procedures in all phases of the company, whether they are hostesses or mechanics or agents or sales people, etc.

Chairman Miller: But including pilots?

A. Including pilots, yes. We have not an overly heavy amount of turn-over in the company, but we have been growing in recent years, so we have had a good deal of activity in employment. Our last flurry of employment, this might bring out a point, has been in the classification of what we call passenger agent or reservation agent. These are ground employees working at offices all over the system. The Operating Department in that case, Passenger Service Department, supplied a representative to travel with me at that time. We visited several training schools in various cities. We interviewed collectively, I would say, about 200 applicants, 200 people who were graduating from training schools, male and female, for positions that we had anticipated openings for. At the time the openings developed, shortly after that, I wouldn't even guess at how many we needed, maybe we needed 30 people; as a result [fol. 397] of our interviews at these schools we had determined which people we felt were best qualified on all the bases we used for determining qualifications of ticket agents, reservation agents, etc., voice, telephone voice, speech, and things of that sort. We had quite a number of people on our list that we thought or we felt were qualified to do the job. We went down the list on these things. We contacted the schools by mail, telling them we would like such and so persons to report for physical examinations and report for duty and for training.

In one particular case, with one of the schools, I think it occurred with others, we said in the event some of these

people have changed their minds, the following names can be considered as approved by us for employment, we would be interested in any of these people. In a way there, you might say we almost left it up to the school to pick our people finally. We had interviewed them all and we supplied the names of people whom we thought best met our qualifications. From that point on in supplying the school with names we were identifying people we felt would be approved but we were covering ourselves to the extent that in the event some of these people rejected our offers of jobs, we would still give the school the opportunity of placing others with us. That's a long ramification, but I think it explains our situation.

By Mr. White:

Q. Do you remember this particular order for four pilots, [fol. 398] then, in June?

A. Do I remember the order for four pilots? You are going back again to the point where they have already been screened and we have six men to select from?

Q. Yes.

A. I can't say that I specifically recall who contacted us, whether I was contacted by telephone. Again, our office is about three and a half miles from the airport and our contacts are by phone. I couldn't really say here now who contacted us, who they contacted in our office. It could have been myself, it could have been one of the clerks in the office.

Chairman Miller: And you testified that you don't know who made the selection of the four?

The Witness: I can't remember that, that's correct, Mr. Miller.

Chairman Miller: Let me ask you on pilots, do you also have lists, or is it just files?

The Witness: It's a file. In the case of the school that I was referring to there were quite a number of them. In the pilots' case it is much more limited.

Chairman Miller: And in these files of the six there was no particular sequence or priority?

The Witness: No.

Chairman Miller: There were six eligible?

The Witness: That's right.

[fol. 399]

By Mr. White:

Q. What brought it to your mind when you read that article in Albuquerque, the Albuquerque Journal, that immediately it was remembered by someone that Green's name was in the file?

Mr. McClearn: I don't think the testimony is that that reference was made by Mr. Sorby. Mr. Bell testified.

Q. Aren't you the gentleman who is in charge of the employment and hiring, etc.?

A. Under Mr. Bell. I work under Mr. Bell, his direction.

Q. Who pulled—let's put it this way: Who pulled Green's name out of the file on the information of this news letter in Albuquerque?

A. As a result of the newspaper item in Albuquerque, I received instructions from Mr. Bell to eliminate his application from the active file of pilots.

Mr. White: I am not doing very good.

Mr. Manzanares: That is the first indication we have had that some definite action was taken.

Chairman Miller: No, you missed that this morning. Mr. Bell testified.

Mr. Manzanares: That that order was given?

Chairman Miller: Yes, when he saw the article in the Albuquerque paper he directed that Mr. Green's application be withdrawn.

[fol. 400] Let me summarize my own impression. If I am not correct, you tell me, but so far as these six eligible names were concerned, they were not names, they were files kept segregated as eligible, with no priority attributed to any one or more of them, and that an order came from Operations, I take it, for four names for the copilot training school, and somebody, presumably in your department who is unknown, selected the four and did not select Mr. Bryant or Mr. Green, is that correct?

The Witness: That's correct, as well as I can remember, Mr. Miller, yes.

Mr. Manzanares: How was the order—I suppose it was testified to by Mr. Bell, but the order to Mr. Sorby to eliminate Green from the file as a result of certain information, was that a verbal order, by telephone?

Mr. Bell: I wrote it on a piece of paper.

Mr. Manzanares: You wrote a memo, I see.

Mr. Sayers: I should like to ask a question.

Chairman Miller: All right.

Cross examination.

By Mr. Sayers:

Q. Mr. Sorby, I understand that Personnel will interview the applicant as to his qualifications, etc.?

A. That's true to a great extent, yes.

Q. Is that your personal job?

A. Yes.

[fol. 401] Q. Did you have such an interview with Mr. Green?

A. A very limited interview. It isn't essential that we interview each individual. We generally do, I would say that.

Q. But you would say you didn't do that in Mr. Green's case?

A. I met him, had the opportunity to chat with him for a few minutes.

Q. Where did you meet him?

A. I believe it was in the Continental cafeteria at the airport. I ran over there for lunch.

Q. Do you usually have your interviews at the cafeteria?

A. No.

Q. Where do you usually carry on the interviews with the applicants?

A. I have an office about three and a half miles from the airport area and the majority of my interviews are in this office, although at other times I will interview at the hangar office; at other times my interviews are conducted anywhere in the country wherever I happen to be.

Q. How does it happen that you didn't interview Mr. Green as you would the other applicants?

A. Well, as I mentioned, we do not necessarily interview each and every individual. There are quite a few people in the company that I have not personally interviewed. This [fol. 402] isn't a necessary requirement. We have the opportunity of reviewing applications, paper applications, and if we have a rather incomplete application, one of my major items of work, actually, is making sure that applications are complete. As, for example, in the case of past work records, it is my duty to make sure that I get sufficient information from the applicant to know that we will be able to use his supplied information in reference checking. One of the major items in my personal conversations with applicants, when time permits I will sit down and chat with the applicants for some time in order to enlighten them about any questions he or she might have about the company. However, that material is all covered through our training programs subsequent to interviews, the indoctrination program within the company, etc.

Q. Has your office yet notified Mr. Green that he is no longer eligible for the job?

A. I don't believe we have.

Q. Do you ordinarily notify applicants if they are not going to be selected or are not eligible?

A. Not in all cases.

Q. In some cases.

A. In some cases, yes.

Mr. Sayers: I believe that's all.

Chairman Miller: Any further questions?

By Mr. Manzanares:

[fol. 403] Q. Is there a continuous file kept regarding applicants that did not make the grade at one particular time, are they kept in an active file, or do you start all over again for the next school?

A. We have a file cabinet loaded with applications of people who have requested employment. These people in many cases are qualified; where we do not have jobs, we have those applications in the files. Normally—

Q. Excuse me for interrupting. I am referring only to

pilots. I am not concerned with the others, but regarding pilots do you keep an active file?

A. Yes, we keep an active file of pilots. If a man has, oh, say on the paper application he does not have the necessary qualifications, if he is close to these qualifications we will keep his application on tap. In the event a man is not qualified at all, say we have a fellow who is 33 years of age applying, we will not keep him in an active pilot file by any means, because we don't feel he will ever qualify. We don't feel that regulation will change with the company. We do keep applications, as a rule, approximately six months.

Chairman Miller: I take it Mr. Green's application file is not an active one?

The Witness: I beg your pardon?

Chairman Miller: I take it that Mr. Green's application file is not an active one?

[fol. 404] The Witness: Not at this moment, no.

Redirect examination.

By Mr. McClearn:

Q. Mr. Sorby, how many applications, approximately, will your office receive during the year?

A. I am sorry, I'd have to make an awfully wild guess. It would be thousands.

Q. That's sufficient. Now, with respect to the interview which is apparently sometimes given to pilot applicants and sometimes not, there has been testimony which you have heard as to the areas or factors which the airline is looking for in its pilot applicants. Are pilot applicants given an interview with someone in the Operations Department?

A. Yes, as long as they—

Q. I mean when they are brought to Denver.

A. If we are specifically bringing them to Denver, yes, they are brought to Denver primarily for that purpose.

Q. So that they are interviewed insofar as pilots are concerned at the Operations level?

A. Correct.

Q. And it is the man from Operations, who does the interviewing, is it, who makes the primary determination as to attitude, personality, judgment, etc.?

A. Yes, the pilot job is a job of high importance.

Q. You do not pass upon a pilot's qualifications, at least in any subjective way? Is my question clear?

[fol. 405] A. Not entirely.

Q. Let me put it this way: Your function in reviewing applications for pilot positions, is it limited to a review of the paper application?

A. Primarily.

Q. In other words, you look to see that there are certain minimum qualifications, such as age and a statement regarding licenses, etc.?

A. Height, etc., yes.

Mr. McClearn: That's all.

Mr. Sayers: I should like to ask one question.

Recross examination.

By Mr. Sayers:

Q. Did Mr. Green get this interview or this final test you have just been talking about, was he given such a test?

Mr. McClearn: Perhaps I was misleading. I didn't mean to indicate it was a final test.

Mr. Sayers: I mean the interview that we have just discussed, did Mr. Green have that?

Chairman Miller: He testified to that, yes.

The Witness: All you have to do, I think, is shake hands with this fellow and you realize you have a pretty good boy. He is very friendly. I have been impressed with him right along.

Chairman Miller: Any other question? If not, thank you very much, Mr. Sorby.

[fol. 406] (Witness excused.)

COLLOQUY

Chairman Miller: Do you have any further witnesses in rebuttal?

Mr. Sayers: I think not.

Chairman Miller: None at all. That concludes?

Mr. Sayers: This concludes as far as I know. There are a lot of questions, but it would just carry on.

Chairman Miller: No use going over the same thing again.

Mr. Sayers: May we have a short recess? Some of the fellows seem to think there might be something else.

Chairman Miller: All right. Let's take five minutes.

(Recess taken.)

Mr. White: I would like to ask Mr. Bell two questions. Mr. Bell, I would like to know what the company's minimum requirements are to be accepted as a candidate for pilot training.

Mr. Bell: Under 30 and over 21, five-eight, and, informally, under six-two. I say informally; we have pilots that are that tall but we prefer them shorter than six-two. You might as well say six feet two—

Mr. White: Or under?

Mr. Bell: Yes. 2,000 hours, of which a reasonable proportion is in multi-engine equipment.

Mr. White: You set a minimum on that?

[fol. 407] Mr. Bell: We will hire people with less than 2,000 hours, which isn't a problem here, of course, but we prefer 2,000 with as much multi-engine as we can get.

Mr. White: Is there a minimum on multi-engine?

Mr. Bell: It is informal, Mr. White.

Mr. White: As long as they have multi-engine?

Mr. Bell: Two hours isn't what we are looking for. It is elastic, again. Wait until they get in the three figures anyway, the time; it is all expressed in hours.

Mr. White: Over a hundred hours, you mean?

Mr. Bell: Over a hundred hours, I think that's safe. One more thing, with jets on the horizon, of course jet time is very interesting to us, too. A jet pilot is going to be a very expensive item to check out.

Mr. White: Now, can you tell me if all six of the applicants met all these minimum requirements?

Mr. Bell: Yes, or they wouldn't have been considered.

Mr. White: Specifically, Bryant—was his name Bryant?—did he have a satisfactory number of hours on multi-engine?

Mr. Bell: Yes, Mr. White, or he wouldn't have been kept in an eligible file.

Mr. White: I would like to switch and ask Mr. Green a question.

Chairman Miller: Ask who?

[fol. 408] Mr. White: Mr. Green.

Did you have conversations with this Bryant?

Mr. Green: As related in my testimony, I did, sir.

Mr. White: How many hours did he say he had on multi-engine?

Mr. McClearn: Please note our objection to that.

Chairman Miller: I think you may cross-examine him. It is one of those cases which is hearsay, but the rules will permit, I think.

Mr. White: If this man's records are here available I can forego the questioning. Have you got Bryant's application records?

Mr. McClearn: No.

Mr. White: That is the only way I can get it.

Chairman Miller: Go ahead.

Mr. White: Did Bryant indicate to you how many hours he had on multi-engine?

Mr. Green: I believe I stated in my testimony I recall Mr. Bryant saying he had no hours in multi-engine aircraft.

Chairman Miller: No hours?

Mr. Green: As I recall our conversation, he said he had no hours in multi-engine equipment. In other words, he had been flying, his flying experience was in single-engine airplanes only, or possibly four-engine airplanes, but no—[fol. 409] Well, I wouldn't even include that, because that would be multi-engine.

Chairman Miller: Multi-engine is four engines.

Mr. Green: Multi-engine would be more than one, and

I would say, then, that Mr. Bryant indicated to me that he had no multi-engine flying experience.

Chairman Miller: Am I to assume, then, that the planes he flew were single motor planes?

Mr. Green: That was my impression entirely.

Chairman Miller: That is your impression.

Mr. Bell: May I say here, it is possible that ~~that~~ could happen, but very, very unlikely, unless it was a jet type or something of that sort. We haven't the facility for training a man to fly multi-engine stuff.

Chairman Miller: As I understood you, Mr. Bell, multi-engine experience is a prerequisite to becoming eligible, didn't you say that before?

Mr. Bell: Yes.

Chairman Miller: So that if Bryant was on your eligible list he must have shown multi-engine experience.

Mr. Bell: There is a certain elasticity to the requirements, to be sure, but it had been my understanding we required some multi-engine time. If there was an effort to pin me down as to the amount, I don't know. Flying aptitude is important, flying time comes next.

[fol. 410] Mr. McClearn: Well, Mr. Green, could a man fly a multi-engine aircraft if he had never done it before?

Mr. Green: Yes.

Mr. McClearn: Could he?

Mr. Green: Yes.

Mr. McClearn: Doesn't it require training to become a multi-engine pilot?

Mr. Green: To become proficient, definitely.

Mr. White: Mr. Chairman, I wonder if it would be possible, we are going to have to do quite a bit of deliberation on this thing, in my opinion, to find out who was qualified or not, and I think if you were to subpoena these records of these six people, that it would probably make the Commission's deliberations a little easier. I wonder if they could be made available to the Commission.

Chairman Miller: Would there be any objection to that, Mr. McClearn?

Mr. McClearn: Certainly if we have them I can see no objection to that.

Chairman Miller: Just for the purpose of looking at the records of those six?

Mr. White: To evaluate the six, yes, according to qualifications.

Chairman Miller: I presume they would be available.

Mr. McClearn: Yes. Mr. Bell did testify, I think, that [fol. 411] they have all been furloughed.

Chairman Miller: But you would still have the file showing the record?

Mr. McClearn: I expect we would.

Mr. White: On Mr. Green's record it showed his qualifications, on the exhibit.

Mr. McClearn: I wonder if the thing to do, I hate to have this thing dragged along, I wonder if we couldn't make those available to you simply as a supplementary exhibit.

Mr. White: That is my intention.

Chairman Miller: That's all right. If you would furnish us with the records on those six, showing their applications, their flying experience, and so forth. I think that is all Mr. White is asking.

Mr. McClearn: I would very much like to go ahead and conclude the formal part of the hearing.

Chairman Miller: That is the intention. I think that is all Mr. White had in mind.

Mr. White: I am trying to get home, remember?

Mr. McClearn: Let me notify you the first of the week.

Chairman Miller: That's all right. Is there anything further, Mr. Sayers?

Mr. Sayers: Nothing further.

Chairman Miller: All right, then, this concludes, with the [fol. 412] understanding you will furnish us—

Mr. Green: May I ask a question, sir?

Chairman Miller: Do you have a question?

Mr. Green: Yes.

Chairman Miller: Yes, I think you may ask a question.

Mr. Green: I wonder if this information which will be supplied subsequently by the Respondent will be available as a part of this public record, and particularly to myself.

Chairman Miller: It will be part of the file here, yes.

Mr. Green: Thank you.

Mr. McClearn: I just want to ask the Commission, if you are going to ask for or permit a closing statement.

Chairman Miller: If you like, yes. If you like, that's fine. I may say this, too, in connection with the closing, it is understood the Respondents are going to furnish the Commission with a memorandum of authorities on the question of jurisdiction within the ten-day period, then I assume that five days should be sufficient, Mr. Sayers. This is not going to be a complete brief for you to submit—

Mr. Sayers: Better make it ten because I will be out of town next week.

Chairman Miller: Ten days, then, to the complainant's attorney.

Mr. Chapman: Does that begin as of today?

[fol. 413] Chairman Miller: Yes.

Mr. McClearn: It is my understanding it is in the nature of a memorandum of authorities as distinguished from a brief.

Chairman Miller: And this relates solely to the issue of jurisdiction of the Commission.

All right, if you would like to make a closing statement, you may proceed, unless Mr. Sayers—

Mr. McClearn: I think Mr. Sayers would be first.

CLOSING STATEMENT IN BEHALF OF COMPLAINANT

Mr. Sayers: Mr. Chairman and Members of the Commission, I realize we are in a hurry to get away from here, it is raining, so forth and so on, so I will make this very short.

I just want to call attention to some things that I think have impressed me, perhaps, and I think you should take consideration of. First, in your deliberations I want you to remember the application. I can't quite give up the idea of them giving to Mr. Green one form of application as late as 1957 and still insisting that that application had not been used since 1954. I can't forget the idea that because the application was not complete, that Mr. Green was asked to write in the word "Negro". If it wasn't material,

if it wasn't used on the present form, it wasn't material, why ask him to write in the word "Negro"?

The second thing I want you to consider in your de-[fol. 414] liberations is the newspaper clipping, that came out, according to testimony, about August 4th. Had Mr. Green's application received consideration, Mr. Green would have been selected, it would have been before the newspaper clipping was published. Mr. Green would have had no reason to have had to put it in the paper, the article he did.

I think we should also note that Mr. Green was given the flight test, the link trainer test, but not interview. It seems like when they got that part done, then they were ready to send him on back East. That was overlooked. Some of the other applicants had had the interview and details given as to their qualifications. According to the testimony, as I see it, Mr. Green did not get that interview.

I think as members of the Commission that you should remember your duties under the law, that you have a right to issue a cease and desist order if you find that these people have discriminated against Mr. Green, that you may take any affirmative action necessary in connection with this matter, such as hiring and reinstatement of back pay, and so forth, all under subsection 12 of Section 6 of our Act.

I think that, briefly, are the things that I would like for you to consider in your deliberations.

Chairman Miller: Thank you, Mr. Sayers.

Mr. McClearn?

CLOSING STATEMENT IN BEHALF OF RESPONDENT

Mr. McClearn: Mr. Chairman, Members of the Commission: You will recall that in the complaint filed in this case there were essentially four allegations. I would like to discuss them briefly in reverse order.

The first allegation in the complaint was that Respondent's use of a photograph in connection with its application form constituted a discriminatory practice prohibited by the Colorado statute. The only testimony with reference

to that allegation is to the effect that Respondent has requested from its applicants at least throughout the 1940's and to date a photograph. The reasons for such request were explained to you in some detail. There was no suggestion by any of the parties, I think, that the reasons for using and requesting a photograph were to discriminate against a person by reason of race, color, religion, or any of the various acts prohibited by the statute. I think that in order to sustain that allegation of the complaint there has to be a finding, there must be a finding by you that this was done with intent to discriminate against the persons within the protection of the Act, and in view of the testimony that this practice was long continued by this Respondent and others generally in the business world, I submit that there is no evidence to support that allegation.

The second allegation had to do with the inclusion on the application form used prior to 1954 of applicant's race. We have admitted both here in the hearing and in our [fol. 416] Answer that before 1954 our application form contained a space for the applicant to indicate his race. The testimony is that that application form was changed on the 1st of January, 1954, and our exhibit, our current application form, shows that we have no such space. We also explained to you why we deleted the reference to race long prior to the passage of the present Anti-Discrimination Act. The reason for eliminating it was because it wasn't useful to us. We don't know and we have no need to know what types of ethnic groups or so-called minority groups are employed by us. I think there is no basis upon which this Commission can find that we intend to discriminate because the testimony is that we don't now, notwithstanding counsel for complainant's inference that we have two types of forms, one for colored people and one for white people, there simply is no evidence to sustain that inference and I don't see how any such finding could be made or should be made.

Thirdly, the complainant charged that the company failed to notify him within ten days as to whether he would be accepted in a certain class. We have presented testimony

to the effect that on the fifth of July a night letter was sent to Mr. Green at his El Dorado, Arkansas address, advising him that he hadn't been accepted for the ensuing class. Respondent received notice that the telegram had been undelivered on the 9th of July. The further evidence by way [fol. 417] of documents indicates that on the 8th of July Mr. Green called Mr. Bell and was immediately advised, confirming the telegram was sent to his then address. The El Dorado address, of course, came from his application form, as he testified.

Now, in the first place, there was no legal duty, I think, on the Respondent to notify any of its applicants within any period of time. I suppose they could have said, "We'll let you know within six months." The facts presented to the Commission indicate that it fairly and accurately discharged whatever obligation it had, and I submit that it was moral only. Certainly there is nothing with respect to that particular allegation upon which a finding of a discriminatory practice can be based.

That brings us, then, to the real crux of this hearing, and that is, whether the Respondent refused to employ Mr. Green on July 8, 1957, because he was a Negro. The evidence presented to you showed that it did not refuse to hire him on July 8, 1957. It advised Mr. Green that he had not been selected for the July class. The evidence was uncontradicted that his application was not rejected as was done with the majority of the people who applied to the Respondent for pilot positions but it was kept pending. That's the first point. In early August, of course, they did withdraw his application from the active file, but that again was not done because he happens to be a Negro. It [fol. 418] was done, as the testimony indicated, because he became involved in a situation which Continental did not desire its employees to be in. The fact that the situation had to do with this particular complainant's race is not germane to the fact of why it was withdrawn. The testimony is that if he had been involved, if he had been a white person and had been involved in a totally different type of controversy, the same result would have followed.

The facts, then, are that he was not refused hire on July 8 as alleged in the complaint. He was refused hire subsequent to early August, 1957, but for reasons which had nothing to do with his race.

Let me review only briefly the evidence on the central issue. The most cogent testimony in hearings of this type would be from the complainant himself. I have no doubt that Mr. Green throughout his life has been subjected to various forms of discrimination and he knows far better than I do or any of you do what discrimination is like. He testified at this hearing that during his interview at Continental Air Lines in June of 1957 he was treated courteously, kindly, and cordially by the persons with whom he came in contact. It is my recollection that he stated quite unequivocally that he was not discriminated against, to the best of his knowledge, while he was in Denver at Continental Air Lines. That's all the direct evidence that there [fol. 419] is on discrimination at that time and place against this complainant.

Turn, then, to the Continental evidence with respect to this situation. Our evidence indicated that there were numerous applicants, in fact, a continuous flow of applicants for pilot positions. Over approximately 175 were interviewed, interviewed at Denver in 1957. 35 were hired, approximately one in five. There were untold numbers who applied who were never asked to come to Denver for an interview. Of the specific class about which Mr. Green complains there were 14 interviewed, there were six who were qualified, there were eight who were rejected. Of the six who were qualified, four were selected and two were placed in a pending file. Of the two who were placed in a pending file, one was employed in September of 1957. The other, Mr. Green, was withdrawn from consideration in August for the reasons which I have already discussed.

At the conclusion of the complainant's testimony there was before this Commission no evidence of discrimination or anything upon which a finding adverse to this Respondent could be based. At that point there came about the situation which we discussed yesterday afternoon, and that

involved the introduction of testimony through Mr. Chapman and Mr. Binkley of conversations with the Respondent. My objection to that whole line of inquiry was overruled by the Commission, and this morning we presented [fol. 420] some evidence in further explanation of what transpired. It seems apparent that there were two areas of conversation, one of which had to do with Mr. Green, and Mr. Chapman and Mr. Binkley were told the situation which the evidence has outlined about the number of applicants, those who were qualified and those who were accepted. There then took place a following and more informal discussion in which Mr. Chapman asked the opinion of the Continental people what could be done about the airline industry problem concerning Negro pilots. A rather frank and honest evaluation of the situation occurred. Mr. Bell in response to questions of Mr. Chapman, and I think in an obvious endeavor to be helpful, discussed with him such problems as he felt could arise.

Now, you and I and everyone in this room would be less than a realist if we wouldn't admit that there would be problems in this area. It goes without saying, and if Mr. Bell had taken the position with Mr. Chapman, "Why, there wouldn't be any problem if a Negro was hired", he'd be less than honest with him.

Now, that testimony has represented the only phase of the complainant's case from which an inference of discrimination could be drawn, and that information was obtained when Mr. Chapman was pursuing his statutory duty, after a formal complaint had been filed, to consolidate and negotiate and discuss with Continental Air Lines the problem [fol. 421] which Mr. Green had raised by his complaint. I feel very strongly that a disservice has been performed by the admission of that testimony. I personally and I know each of you are in wholehearted accord with the purpose of this statute. It is a high-minded purpose, and certainly we believe in the principles behind it, and particularly in the principle which will resolve these racial problems without the necessity of litigation, but through the devices of conciliation and persuasion. If as a result of the use of

this type of frank discussion with Mr. Bell, resulting from the use of that discussion at this hearing, the conciliation phase of the statute is in effect nullified, and if as a result Continental and other employers become reluctant to discuss these problems frankly, the purposes of the statute will not have been served and neither will the people of Colorado.

In summation and to conclude, I submit to you that when a charge of this nature is brought against an employer, the burden of substantiating that charge is upon the person who brings it. I submit to you that upon all of the evidence that burden has not been carried.

I would submit in conclusion one somewhat rhetorical question to you. You have indicated by your inquiries that you feel—I don't mean to say it quite that way, but there is some question as to whether the fact that Mr. Green was not one of the four applicants indicates that he was intentionally discriminated against by Continental because he was a Negro. What your questions suggest to me is this: If you had six qualified applicants and four positions to be filled, Mr. Green because he is a Negro and because there are no other Negro pilots employed by you should have been one of the four. If that had been done, if Continental in its employment practices had been constantly conscious of the practice and effect of this law and they had said to themselves, "Look here, we are going to be accused of a violation of this statute if we don't hire Mr. Green, therefore take one of those white pilots off your list and put Mr. Green in", would they have been less guilty of a violation of this statute, or would the displaced white pilot have just reason to feel he had been discriminated against because he was white?

I will ask you now and during your deliberations to consider all of the evidence which has been brought before you, and I submit to you that no charge of discrimination has been made and sustained against this Respondent. Thank you very much.

Chairman Miller: Thank you, Mr. McClearn. I thank counsel for both sides for their able presentation of the

case, their careful consideration and their courtesies. The Commission will review the transcript of all the evidence and the arguments, and the legal questions as well, and also will expect, in accordance with our agreement, Mr. McClearn, the presentation of the file of the six applicants [fol. 423] so those can be studied at the same time as the transcript.

The matter will be taken under advisement. That concludes this hearing. Thank you all again.

(Whereupon, at 3:35 p. m. the proceedings in the foregoing matter were adjourned.)

[fol. 424] Reporter's Certificate to foregoing transcript (omitted in printing).

BEFORE THE COLORADO
ANTI-DISCRIMINATION COMMISSION

Volume 50, Page 90

COMPLAINANT'S EXHIBIT NO. 1

LEGEND: Insert N/A in the items below which are not applicable.

PERSONAL DATA	1. LAST NAME - FIRST NAME - MIDDLE NAME GREEN MARLON DEWITT		2. SERVICE NUMBER AO 222 1613		3. GRADE, RATE OR RANK Capt. (T)		4. DATE OF BIRTH (Day, Month, Year) 2 Apr 57	
	5. DEPARTMENT, COMPONENT AND BRANCH OR CLASS Air Force AFRES		6. PLACE OF BIRTH (City and State or Country) El Dorado, Ark		7. DATE OF BIRTH 6 Jun 29		8. DATE OF BIRTH 6 Jun 29	
	9. RACE Negro	10. SEX Male	11. COLOR HAIR Black	12. COLOR EYES Brown	13. HEIGHT 6-0	14. WEIGHT 190	15. U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	16. MARITAL STATUS Married
TRANSFER OR DISCHARGE DATA	17. TYPE OF TRANSFER OR DISCHARGE Discharge		18. STATION OR INSTALLATION AT WHICH EFFECTED Parke AFB, Calif		19. REASON AND AUTHORITY SDN 520 Resign Par 5b(3) AFR 36-12 as amended Hq USAF Mac AFMP-ABC 179959 dtd 21 Mar 57		20. EFFECTIVE DATE 8 May 57	
	21. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 36th Air Rescue Sq (MATS)		22. CHARACTER OF SERVICE Honorable		23. TYPE OF CERTIFICATE ISSUED DD Form 256 AF		24. DATE INDUCED NA	
	25. SELECTIVE SERVICE NUMBER NA		26. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY AND STATE NA		27. DISTRICT OR AREA COMMAND TO WHICH RESERVIST TRANSFERRED NA		28. DATE OF ENTRY 24 Mar 51	
SELECTIVE SERVICE DATA	29. TERMINAL DATE OF RESERVE OBLIGATION NA		30. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION <input type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> REENLISTED <input checked="" type="checkbox"/> OTHER		31. TERM OF SERVICE (Years) Indef		32. DATE OF ENTRY 24 Mar 51	
	33. PRIOR REGULAR ENLISTMENTS N/A		34. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE 2/LT		35. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) Reese AFB, Texas		36. STATEMENT OF SERVICE	
	37. NONE OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County and State) 724 S Smith Ave, El Dorado, Union, Ark		38. RELATED CIVILIAN OCCUPATION Airplane Plt		39. TOTAL ACTIVE SERVICE 9 3 4		40. TOTAL (Line (1) + Line (2)) 9 3 4	
SERVICE DATA	41. SPECIALTY NUMBER AND TITLE 1034 Plt, Amph		42. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED National Defense Service Medal		43. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if any) N/A		44. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND/OR POST-GRADUATION COURSES SUCCESSFULLY COMPLETED	
	45. SCHOOL OR COURSE Randolph Field, Texas		46. DATES (From - To) Jun 51-Oct 51		47. MAJOR COURSES Combat Crew Train (B-29)		48. OTHER SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED Armed Forces Inst Test Pass 2CX(College Equiv 1952)	
	49. GOVERNMENT LIFE INSURANCE IN FORCE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		50. VA BENEFITS PREVIOUSLY APPLIED FOR (Specify type) None		51. VA CLAIM NUMBER NA		52. REMARKS Item #3, 1/LT ResAF (AFRes) (P) 24 Mar 53, PSD 20 Apr 57, Blood Sp "B" Entitled to \$300.00 Mustering Out Pay. PL 550 82d Cong, 1st Instl Paid \$100.0. NACCompl 23 Sep 50. filed 4th Dist OSI, Add AFSC: 1231C-Pilot Bomb, 1221C-Pilot Lt Bomb.	
AUTHENTICATION	53. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County and State) See #23		54. SIGNATURE OF PERSON WHO TRANSFERRED OR DISCHARGED Marlon S. Green		55. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER J. F. OPELLA CWO W-2 USAF		56. SIGNATURE OF OFFICER AUTHORIZED TO SIGN J. F. OPELLA	
	57. REMARKS See #23		58. REMARKS See #23		59. REMARKS See #23		60. REMARKS See #23	
	61. REMARKS See #23		62. REMARKS See #23		63. REMARKS See #23		64. REMARKS See #23	

[fol. 425]
BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION
COMPLAINANT'S EXHIBIT NO. 1

FORM 214

REPLACES EDITION OF 1 JUL 52 WHICH IS OBSOLETE AFTER 1 JULY 1956.

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

Volume 504 Page 90

6003444
FOR CONVENIENCE A CERTIFICATE OF SERVICE NO. _____ HAS BEEN
ISSUED BY THE VETERANS ADMINISTRATION TO BE USED FOR THE FUTURE REQUEST
OF ANY GUARANTY OR INSURANCE BENEFIT UNDER TITLE III OF SERVICEMEN'S
RE-ENLISTMENT ACT OF 1944, AS AMENDED. THAT MAY BE AVAILABLE TO THE
PERSON TO WHOM THIS SEPARATION PAPER WAS ISSUED. VARD, NEW YORK, N. Y.
VETERAN ELIGIBLE UNDER P.L. 550.

[fol. 427]

STATE OF MICHIGAN)
COUNTY OF INGHAM) ss..

I, C. Ross Hilliard, Clerk of the Circuit Court and of the County of Ingham, do hereby certify that the foregoing is a true and correct photocopy reproduction of ^{Separate} Honorable Discharge from the United States ... Air Force ... as appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Mason, Michigan this ..18th...day of ...September...A.D.1957.

C. ROSS HILLIARD, County Clerk

By *[Signature]*
Deputy County Clerk

HEADQUARTERS
AIR TRAINING COMMAND

PERSONNEL ORDERS)

NUMBER 20)

SCOTT AIR FORCE BASE
ILLINOIS
20 February 1951

1. Having completed the required course of instruction at the United States Air Force Advanced Multi-Engine Pilot School, Iness Air Force Base, Texas, each of the following named United States Air Force Officers (Class 51-B) is, under the provisions of paragraph 8a(1)(a), Air Force Regulation 50-7, 10 July 1946, as amended, and letter AFMFP-1-0, Headquarters United States Air Force, Washington, D.C., 3 March 1950, Subject: "Authority to Grant Aeronautical Ratings", rated PILOT effective 24 March 1951:

CAPTAIN

MANUEL FLORES, JR., A01553083

FIRST LIEUTENANT

LAWTON R. CASTLE, JR.,

A02101984 COURTLAND J. KISSER

A0590954

SECOND LIEUTENANT

JOHN J. ADDINGTON

JOHN J. BEALL, JR.

ALFRED R. BEENE

J. T. BERTINGTON

NORMAN N. BLASKOSKI

WALTER G. BRAFFORD

WILLIAM L. BROWN

HARRY L. BUSH

JAMES BUTLER

CARL A. CARLSON

JAMES E. CURTIS

THEODORE D'AMICO

PETER J. DANIEL

JOHN E. DAVIS

CHARLES E. DUMPHY

STANLEY A. ELLIS

WILLIAM J. FERGUSON

ROBERT E. FLYNN

JOHN C. FREMONT

FRANK H. FULTON

DALE GIBBS

ALVIN B. GONZALEZ

BRUCE E. GRAHAM

MARLON D. GREEN

A0590509

A02221593

A02221594

A02221595

A02221596

A02221597

A02221598

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A02221606

A02221607

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A0950919

A02221609

A02221610

A02221611

A0590911

A02221612

A02221613

ROBERT E. HALES

DAVID J. HAY

CHARLES F. HILL

GEORGE E. KRAUS

RUSSELL C. LARSON

JESSE P. LINDO, JR.

WILLIAM R. McIVER, III

PHILIP E. McCHESNEY

CHARLES W. McCORMACK

WILLIAM I. McCOWEN

JOHN C. MILLER

CURTIS P. MITCHELL

FRED L. OWENS, JR.

JAMES R. PARSONS

LOUIS M. PRESTWOOD, JR. A01856762

J. P. REAS, JR.

JOHN D. ROCHE

GEORGE R. SAVAGE

LEON J. SIEMS

CECIL B. SMITH

THOMAS W. SPENLIEG

DALLAS K. STEPHENS

Z. D. STRICKLAND

ROBERT F. SULLIVAN

A0590917

A02221614

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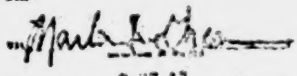
A02221635

61-43-ARMY, AG, A-1, 10-1-1

[fol. 431]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 4

UNITED STATES OF AMERICA		DEPARTMENT OF COMMERCE		AIRCRAFT ADMINISTRATION	
THIS CERTIFIES THAT		MARION DEWITT DILLON 734 SOUTH SMITH AVENUE EL PASO, TEXAS			
DATE OF BIRTH	1-6-22	AGE	72	RACE	BLACK
SEX	M	EDUCATION	BSA	STATUS	PROF
HE HAS BEEN FOUND TO BE PROPERLY QUALIFIED TO EXERCISE THE PRIVILEGES OF					
COMMERCIAL PILOT					
RATINGS AND LIMITATIONS					
AIRPLANE SINGLE ENGINE LAND					
AIRPLANE MULTI ENGINE LAND AND SEA					
INSTRUMENT					
					
DATE OF ISSUE 9-27-27					

CHANGE OF ADDRESS

Civil Air Regulations require that written notice of any change in permanent mailing address shall be furnished within 30 days to the Airman Records Branch, Civil Aeronautics Administration, Washington 25, D. C.

DURATION

This certificate is of such duration as is provided in the currently effective Civil Air Regulations, unless sooner suspended or revoked.

DUPLICATE CERTIFICATES

If this certificate is lost, destroyed, or mutilated, a duplicate may be obtained at the written request of the holder to the Airman Records Branch, Civil Aeronautics Administration, Washington 25, D. C. Such request must be accompanied by a check or money order in the sum of \$2.00, payable to the CAA, Department of Commerce. A duplicate will be issued only of a currently valid certificate.

[fol. 433]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 5

(Western Union Telegram Form)

1957 JUN 19 PM 5 32 (08) ..

NBG117 PD AR=FAX DENVER COLO VIA
ELDORADO ARK 19 NFT=MARLON D GREEN=
180 WEST 135 ST=ADVISE BY COLLECT WIRE AT EARLIEST CON-
VENIENCE IF STILL INTERESTED IN POSSIBLE
PILOT EMPLOYMENT IN NEAR FUTURE=KEN C SORBY EMPLOYMENT MGR
CONTINENTAL AIR LINES INC DENVER COLO=

[fol. 434]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 6

(Western Union Telegram Form)

(56) ..

NBG140 PD AR=FAX DENVER COLO 21 308PMM=

1957 JUN 21 PM 5 59

MARLON D GREEN=
181 WEST 135 ST=APPRECIATE YOUR COMING TO DENVER FOR IN-
TERVIEW AT EARLIEST CONVENIENCE TRANS
WORLD AIRLINES PASS NEWYORK/DENVER
ROUND TRIP WILL BE AVAILABLE FOR YOUR
PICK-UP AT AIRPORT TIKET COUNTER. SERVICE
CHARGE OF \$10 AND OTHER EXPENSES WILL BE
TO YOUR OWN ACCOUNT. ADVISE APPROXIMATE
DATE OF TRAVEL==KEN S CORBY CONTINENTAL AIR LINES INC
DENVER COLO=

176

[fol. 435]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 7

(Western Union Telegram Form)

(53).

DEA343 KA202

K DVB183 PD=FAX DENVER COLO 8 1147AMM=

1957 JUL 8 PM 2 06

MARLON D GREEN=

913 NIPP ST LANSING MICH=

PURSUANT OUR TELEPHONE CONVERSATION
FOLLOWING IS COPY OF WIRE SENT YOU LAST
FRIDAY AT YOUR PERMANENT ADDRESS 734
SOUTH SMITH AVENUE EL DORADO ARKANSAS
"REGRET YOU WERE NOT SELECTED FOR NEXT
COPILOT CLASS"=

H W BELL JR DIRECTOR OF PERSONNEL
CONTINENTAL AIR LINES INC=

[Handwritten notation—Note: Parents never received
telegram in Arkansas.—MDG.]

[fol. 436]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 8

December 27, 1957

Mr. Harrold W. Bell, Jr.
Director of Personnel
Continental Air Lines, Inc.
P. O. Box 9063
Denver, Colorado

Dear Mr. Bell:

This acknowledges your letter of December 23, 1957 concerning our scheduled conciliation meeting on the Marlon D. Green complaint.

I concur with your request that this meeting shall be completely informal and unrecorded. I sincerely hope that we can arrive at a satisfactory settlement of the complaint at this meeting.

The Commission has designated me to represent it at the January 7th meeting; therefore, none of the Commissioners will be present.

Very truly yours,

Roy M. Chapman, Coordinator

RMC/co

cc: Mark Kramer

[fol. 437]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 9

CONTINENTAL AIR LINES, INC.

General Policy Manual

PART 1—EMPLOYMENT

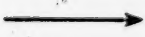
A. EMPLOYMENT POLICY

Applicants for employment will be considered solely on the basis of fitness and ability for the work as determined by such factors as character, skill, intelligence, and physical qualifications.

B. RESPONSIBILITY FOR PROCUREMENT

The recruitment of qualified applicants and their placement on suitable jobs are fundamental personnel activities. It is the responsibility of the Personnel Department to procure applicants for positions, screen them to determine their ability and fitness for the work required, and refer them to the head of the department or his designated representative for final selection. No employee is to be placed on the payroll unless this procedure has been followed.

NOTE: Employees are requested and encouraged to refer to the Employment Manager for interview individuals with whom they are acquainted and who may be interested in employment with Continental Air Lines. It is requested that employees based away from Denver communicate with the Employment Manager before referring an applicant to Denver to be certain that a representative of the Personnel Department will be available for interview. Upon authorization by the Personnel Department, on-line passes are provided applicants, who must be specifically advised that any expenses which they incur will be borne by them.



C. RESPONSIBILITY FOR SELECTION

The Department Head or his designated representative will select from the applicants referred to him by the Employment Manager the individual best suited for the position.

D. EMPLOYMENT TESTS

As a means of improving the selection process the Personnel Department will administer selected tests designed to measure the extent to which an applicant's abilities qualify him for the position for which he is applying. Such tests will include intelligence, aptitude, achievement, interest, and tests of personality. The Personnel Department will report the test results to the head of the department in which the opening exists together with its recommendation of the applicant's fitness for the position as an aid in accepting or rejecting the applicant.

E. EMPLOYMENT PROCEDURE

1. *Employment Authorization*—No employee will be hired, promised employment, or placed on the payroll unless the Personnel Department holds a properly authorized Employment Requisition.
2. *Employment Application*—All applicants for employment will complete an employment application and other supporting documents before they are accepted for employment and entered on the payroll.

(9/1/55) 11/1/56

Sec. IV Page 2

[fol. 438]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 10

October 4, 1957

Mr. Edward Kammerer
Box 187, RR #2
Rapid City, South Dakota

Dear Mr. Kammerer:

Marlon Dewitt Green, now residing at Lansing, Michigan, and whose paternal home is El Dorado, Arkansas, is endeavoring to obtain employment as a commercial airline pilot. He feels that he has been refused such employment because he is a Negro.

We are investigating him to determine whether or not he meets the requirements for such employment. Mr. Green has given us your name as a reference.

Will you please fill out applicable spaces on the attached Personality Record Form promptly and return it to us in the self-addressed, airmail envelope. Please write any additional remarks you care to make on the reverse side of the form.

Very truly yours,

Roy M. Chapman
Coordinator
RMC:sp
Enclosures

RECEIVED
OCT 11 1957

PERSONALITY RECORD OF APPLICANT
Suits 220 - 555 Broadway - Denver, Colorado

Marlon D. Green Address 913 Nipp St., Lansing, Mich.

Position: Commercial Airline Pilot
Main: ANTI-COMMUNISM DIVISION column

	Excellent	Good	Fair	Poor	Remarks
General Qualifications:					
Accuracy of Work	X				
Application	X				
Courtesy	X				
Industry		X			
Integrity	X				
Enthusiasm	X				
Leadership	X				
Self-Reliance		X			
Initiative	X				
Tactfulness	X				
Ability to Meet People	X				
Business Sense		X			
Personal Appearance	X				
Ability to Express Self Clearly	X				
Practical Ability in:					
1. XXXXXXXXXXXXXXXXXXXX					
2. XXXXXXXXXXXXXXXX					
3. XXXXXXXXXXXXXXXXXXXX					
4. XXXXXXXXXXXXXXXX					
5. XXXXXXXXXXXXXXXX					
6. XXXXXXXX					
7. XXXXXXXXXXXXXXXX					
8. XXXXXXXXXXXXXXXX					
9. XXXXXXXX					
10. Managing one's Finances		X			

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Would you recommend the applicant for the position applied for? *I would recommend him highly.*
 In that position, has the applicant been successful, to your knowledge? *I believe his service record speaks for itself as to professional qualifications.*
 In that position, has the applicant failed, to your knowledge? *Only to the extent of achieving what apparently is denied him because of me. See other side, please.*

Edward J. Kammerer
October 10 1957
Box 187 RR 2, Rapid City, South Dakota
Rancher

I was a student in a Southern "white" university when I first encountered Harlan Green several years ago. Our Department head, who happens to be a nationally-famous sociologist and scholar, had invited him to speak to upper division sociology classes on Air Force integration policies. My reaction to Mr. Green's performance in that somewhat sophisticated atmosphere was such that I sought his acquaintance and friendship. Since then, in the several roles in which I have known him, he has been nothing less than outstanding. Having observed him as a professional man, husband and father to an exemplary family, personal friend and companion in diverse social groups and situations, he has never given me any cause for my confidence in him. Particularly I have been impressed with his depth of understanding and compassion for human nature, his dedication to principle in all areas of his life, his quiet dignity, common sense and winning personality. In all of his social contacts while a friend and visitor in my home and community (not even prejudiced surroundings!) he has gained respect and admiration.

I anticipate, of course, that your Commission may receive many such replies as mine in the course of your work, and that such statements may carry little weight. I need cast no bouquets for Mr. Green, his qualifications stand on their own merit. I am, however, prepared and willing to furnish a dozen or more signed statements from others in my community who have made Mr. Green's acquaintance.

Edward Kammerer

[fol. 441]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

COMPLAINANT'S EXHIBIT No. 11

34

THE STATE JOURNAL
Lansing, Michigan

Sunday, Aug. 4, 1957

BLAMES RACIAL BIAS

JOB AS AIRLINE PILOT ELUDES LANSING NEGRO

By FRANK HAND
(Journal Staff Writer)

Marlon DeWitt Green of 913 Nipp st. wants to become a scheduled airline pilot.

If he does he will make history, because Green is a Negro.

The past three months have been 12 long weeks of frustration for the six-foot, 190-pound, 28-year-old former air force captain.

In the last three months he has traveled to California, to Denver, to Chicago, to New York, to Washington, D. C., in quest of work for which he has outstanding qualifications.

Green served nine years in the air force, seven of them as a pilot.

During those seven years his official flight record shows he has logged a total of 3,077 flying hours. Many of them were logged in the most difficult branch of the air force, the air-sea rescue service.

His record shows he has been checked out as a pilot for B-29, B-26, SA-16 (Albatross Amphibian), twin-engined Beechcraft, and as a co-pilot for V-97 (Stratocruiser). Besides, he has unlimited instrument and radio tickets.

Broken down, his record shows: 114 hours, single engine; 2,068 hours, twin engine; 606 hours, four engine; 225 hours, instrument; 184 hours, hood instrument; 127 hours, Link trainer time; 523 hours, night; and 130 hours multi-engine instrument time.

In addition, he has 226 hours of instructor time.

He saw service in the far east where most of his time was spent flying over water. Before his discharge he was assigned to the air-sea rescue service of the air force.

"Because the airlines promised they would hire pilots without discrimination," Green said, "I decided to quit the air force and become an airline pilot."

He was discharged from the air force last May 8.

Prior to his discharge Green said he wrote United Airlines and his application was received with enthusiasm until high officials learned of his race.

Green said he was given the routine company pilot's test which he passed. However, Green said, he was told, after a considerable delay, his psychological test showed "you cannot handle emergencies in the air."

This was a difficult thing for a former air-sea rescue pilot to swallow.

APPLICATION FILED

In Washington, D. C., he applied at Capital Airlines where, he said, officials told him they would keep his application on file until they received their new shipment of Vickers Viscounts.

So far, Green said, his greatest hope is with Trans-World airlines. He said he has been promised an interview with the president of the airline but no date has been set.

Green said he had great hopes of landing a job in Michigan where he learned there is a great demand for company pilots with his qualifications.

However, he has run into a brick wall here too, Green said.

One company official said bluntly, "I just don't know what to do with you," Green reported.

"There is no doubt in my mind that I have been turned down in every case because of my race," Green said.

Green has filed unfair labor practices complaints in the states of Washington and New York, and Washington, D. C. against United airlines.

(Photograph of Complainant)

MARLON D. GREEN

ENTERS COMPLAINTS

In Washington, D. C., he has filed complaints with the president's committee on government contracts against Capital Airlines and the air division of General Motors.

In Michigan he has filed complaints with the fair employment practices commission against General Motors, Francis Aviation and Abrams Aerial Survey corporation.

A spokesman for the Michigan FEPC said investigation has not yet begun on any of the three complaints filed here.

Green, a native of Arkansas, planned originally to settle in New York but could not get housing. He came to Lansing because a number of his relatives live here. Presently he is living off his savings.

Green is married and the father of five children.

[fol. 442]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

RESPONDENT'S EXHIBIT NO. 1

(Letterhead of Continental Air Lines, Denver 16, Colorado)

December 23, 1957

Mr. Roy M. Chapman, Coordinator
Colorado Anti-Discrimination Commission
655 Broadway Building, Suite 220
Denver 2, Colorado

Dear Mr. Chapman:

We have your letter of December 16, 1957, scheduling a conference in your office on January 7, 1958, with respect to the complaint filed by Marlon D. Green. As previously advised, we will be glad to discuss this matter with the Commission at that time.

There is, however, one point which we would like to have clarified prior to the meeting. We understand that the purpose of this meeting is to informally consider the positions of the parties in an effort to settle or compromise any differences by means of conference, conciliation and negotiation. For such a meeting to be of any value, the

persons present should engage in full and free discussion. In order that such a discussion may take place, we believe two things are necessary: First, that no stenographic or other recording of the discussion should be made; and second, it should be understood that nothing said by any of the persons present would be used in any way in any formal proceeding which may follow. In addition, certain notes were taken at our earlier meetings and it should be understood that those discussions took place in a conciliation effort and will not be used in any subsequent proceeding.

Since Mr. Green has filed a formal complaint with the Commission, it seems fairly clear that he has commenced legal action against Continental Air Lines, and it is for that reason we want to be sure we understand the purpose and effect of our meeting with the Commission. We do hope the proposed meeting can be held in the informal atmosphere suggested above, and that we can arrange for a satisfactory disposition of the matter. We intend to approach the meeting in that light and to use our best efforts to arrive at a solution acceptable to all concerned.

Will you please confirm our understanding that the meeting will be conducted as suggested above?

Yours very truly,

/s/ HARROLD W. BELL, JR.
Harrold W. Bell, Jr.
Director of Personnel

HWB:HC

cc: Mark Kramer



Continental Air Lines

APPLICATION FOR EMPLOYMENT

TO ALL APPLICANTS:

If you are completing this form in our Employment Office, please complete only the first page, then hand it to the receptionist. The receptionist will ask you to complete the application form, or will otherwise advise you. If you are completing this form at any other point, please answer all questions fully. A recent photograph, of sufficient size to show features clearly, is required on all completed applications.

Type of work applied for: _____ Date: _____

Name (Print or type): _____
 (Last) (First) (Middle) Suf. Suf. No. _____

Present Address: _____
 (Street & No.) (City) (State) Phone: _____

Home Address: _____
 (Street & No.) (City) (State) Phone: _____

In case of emergency notify: _____
 (Name) (Address) (Religion) (Phone)

Age: _____ Date of Birth: _____ Place of Birth: _____ Sex: _____ Height: _____ Weight: _____

Condition of Health: _____ State Physical Defects: _____

Time lost in last 5 years due to illness: _____ Selective Service Classification: _____

Citizenship: _____ Can you furnish a Birth Certificate? _____ No. of Dependents: _____

Marital Status (Check one): Single: _____ Married: _____ Widowed: _____ Separated: _____ Divorced: _____ Date of Marriage: _____

Do you own your home? _____ Rent? _____ Live with relatives? _____ Do you own an automobile? _____

Can you accept immediate employment? _____ If not, how soon? _____ Are you a member of the Communist party? _____

Will you accept night work? _____ Will you accept transfer out of state? _____ Locality preferred: _____

Have you ever been arrested? _____ If so, explain: _____

Has bond ever been refused or cancelled? _____ What salary do you expect? _____

What income do you have other than your salary? _____ Source: _____

How much do you owe? _____ For what? _____

Amount of life insurance carried: _____ Do you carry hospitalization insurance? _____

Circle last grade completed in school: 1 2 3 4 5 6 7 8 9 10 11 12 (College) 1 2 3 4 (Degrees) _____

In which quarter of your class did you rank? _____ What percentage of college expenses did you earn? _____

What is your typing speed? _____ (wpm) Shorthand? _____ (wpm) Office machines operated: _____

What languages do you speak? _____ State your hobbies: _____

Are you related to any officers, directors or employees of this company? _____ Names: _____

What types of positions have you held? _____

Who referred you to our company? _____ State briefly your qualifications for the work for which you are applying: _____

APPLICANT'S STATEMENT

I hereby agree, if accepted for employment, to cheerfully keep all rules and regulations, to perform all duties assigned to the best of my ability, and to be responsible for company property entrusted to my care. Furthermore, I agree to acquaint myself with company policy and abide thereby. I hereby authorize investigation of all statements contained in this record. I certify that such statements are true, and understand that misrepresentation or omission of facts called for is cause for separation from the company's services.

(Signed) _____

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 BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

RESPONDENT'S EXHIBIT No. 2

EDUCATIONAL RECORD

TYPE	NAME	LOCATION	DATES	COURSES	GRADUATE
Elementary					
High					
Trade					
Business					
University					
Other					

If you did not graduate, why did you leave school?

Of what fraternal orders or clubs are you a member?

Check college activities in which you were successful: Athletics: Music: Dramatics: Class offices: Societies:

EMPLOYMENT RECORD

(Start with MOST RECENT employment. Explain lengthy periods of unemployment. Go back at least five years.)

DATES (Mo. & Yr.)		EMPLOYER	MAILING ADDRESS	MONTHLY EARNINGS	POSITION HELD	REASON FOR LEAVING
From:	To:					

MILITARY RECORD

Branch and dates of service: Type of discharge:

State full details of Reserve affiliation:

REFERENCES

(List three persons who have known you for five years or longer, to whom we may refer for information as to your character, habits, initiative, ability, etc. DO NOT REFER TO RELATIVES OR FORMER EMPLOYERS.)

NAME	MAILING ADDRESS	YEARS KNOWN	OCCUPATION

DO NOT WRITE BELOW THIS LINE

Employed as: Starting rate: Effective date:

Location: Department:

Acquisition: Date of physical exam:

Approvals: (Dept. Representative) (Employment Mgr.) (Personnel Director)

**APPLICANTS FOR PILOT, HOSTESS, MAINTENANCE OR COMMUNICATIONS WORK
MUST FILL IN APPROPRIATE SPACES ON THIS PAGE**

PILOTS

QUALIFICATIONS:

1. **EDUCATION:** High school, some college preferred
2. **AGE:** Not under 21 nor over 30 years
3. **HEIGHT:** Minimum 5'8"
4. **HEALTH:** Ability to pass Class I CAA physical exam
5. **VISION:** 20/20 without correction
6. **LICENSES:** CAA Commercial Pilot, CAA Instrument rating
7. **FLIGHT TIME:** Minimum 2000 hours
(Flight time must be substantiated by certified log or record)

Pilot Certificate No.: _____ Grade: _____ Instructor's rating: _____

Aircraft Equipment Ratings: (Land): _____ (Water): _____

Total Hours: _____ Night: _____ Cross Country: _____ Hours as: (First Pilot), _____ (Copilot) _____

List types of aircraft flown: _____

Soloed on: (Type of Aircraft): _____ At: (City): _____ Date: _____

Instrument Time: (Actual): _____ (Simulated): 1. Hood: _____ 2. Link: _____ Type rating: _____

What military pilot rating do you hold? _____ Nature and date of waivers: _____

What training have you had in: 1. Meteorology? _____ 2. Navigation? _____

3. Radio? _____ 4. Aircraft instruments? _____

Give date, place, type aircraft, circumstances and penalties on:

1. Accidents you have had resulting in injury or death of passengers: _____

2. Violations with which you have been charged: _____

State total hours flown and equipment used in last six months: _____

Date of last physical exam: _____ Class: _____ Waivers: _____

MECHANICS

Show amount of aircraft experience in each type of work for which qualified:

TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)
Aircraft Engine Maintenance		Airplane Overhaul		Line Service	
Aircraft Engine Overhaul		Instrument and/or Electrical		Special Training	
Airplane Maintenance		Sheet Metal		Other	

Do you hold valid C.A.A. licenses? "A" No: _____ "E" No: _____ "A & E" No: _____

List types of airplanes or engines familiar with and amount of experience on each: _____

101.4451

COMMUNICATIONS

F.C.C. radio operator license held: (No.): _____ (Class): _____ (Expires?): _____

How much total experience as radio-telephone operator? _____ Teletype operator? _____

If you are applying for radio maintenance work, give detailed account of specialized training and experience: _____

[fol. 447]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

RESPONDENT'S EXHIBIT No. 3

(Western Union Telefax Form)

YOUR NL 5TH MARLON D GREEN 734 SOUTH SMITH
 AVENUE ELDORADO ARK SGD JACK WEILER
 CONTNL AIRLINES INC UNDELIVERED SAID TO
 HAVE GONE TO LANSING MICHIGAN 9113 NYPT
 STREET

SERVICE DEPT DVR 6TH

1240 P

[fol. 448]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

No. 25

[Title omitted]

STIPULATION AS TO TIME FOR FILING ANSWER TO RESPONDENT'S
 MEMORANDUM OF LAW—Filed May 24, 1958

Whereas, the above named and numbered complaint is now pending before The Colorado Anti-Discrimination Commission, and Respondent has filed "Respondent's Memorandum of Law Concerning Jurisdiction of the Commission", and

Whereas, the Commission has ordered that the Complainant be allowed ten (10) days in which to answer the same, which ten days expires May 29, 1958, and

Whereas, time for filing answer is now due and complainant has not yet completed the necessary preparation thereof, it is stipulated and agreed, by the parties hereto, that complainant be allowed an additional ten days in which to file answer to respondent's Memorandum of Law.

Duke W. Dunbar, Attorney General, By Wendell P. Sayers, Assistant Attorney General, Robert L. Nagel, Assistant Attorney General, Attorneys for Complainant, Room 4 State Capitol, Denver 2, Colorado.

Holland and Hart, By Patrick M. Westfeldt, William C. McClearn, Attorneys for Respondent, 520 Equitable Building, Denver 2, Colorado.

[fol. 449]

[File endorsement omitted]

[fol. 467]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

Supplementary Exhibits

(Letterhead of Holland & Hart, Denver 2, Colorado)

May 13, 1958

Mr. Edward Miller, Chairman
Colorado Anti-Discrimination Commission
University Building
Denver, Colorado

Re: Marlon D. Green v. Continental
Air Lines, Inc.

Dear Mr. Miller:

In accordance with the request of the Commission at the recent hearing in the above matter, there are enclosed the original Application for Employment forms received by Continental Air Lines from the six pilot applicants.

The Commission was interested in the multi-engine flying experience of these applicants. Upon examination of the application forms, we noted that such information is not contained therein. Continental does not have a permanent record of the multi-engine experience of either its applicants or its pilot employees and the only place we know where this information can be obtained is from the personal flight log records of each applicant. Accordingly, we have asked Continental Air Lines to contact each of these applicants to obtain this information as of the date of the applicant's interview or employment by Continental. One of the applicants was never employed by Continental and at least one of them has since resigned to obtain employment elsewhere. Hence it may take several days to locate and

contact these persons. We will forward this information as soon as it is received. Since Mr. Green testified in some detail with respect to his flying experience, we do not believe it is necessary to contact him on this point.

Very truly yours,


~~HOLLAND & HART~~

By ~~/s/~~ WILLIAM C. McCLEARN
William C. McClearn

WCM/de
Enclosures
Registered Mail

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[fol. 468]

(See opposite) 

Continental Air Lines

APPLICATION FOR EMPLOYMENT

 (ATTACH
PHOTOGRAPH
HERE)

YOUR APPLICATION

If you are completing this form in our Employment Office, please complete only the first page, then hand it to the receptionist. The receptionist will ask you to complete the application form, or will otherwise advise you. If you are completing this form at any other point, please answer all questions fully. A recent photograph, of sufficient size to show features clearly, is required on all completed applications.

Type of work applied for: CO PILOT Date: 19 April 57

Name (Print or type): COLE HOWARD FRANKLIN Soc. Sec. No. 449 44 2347

Present Address: 2007 JONES, WINTER FALLS (Street & No.) (City) (State) (Phone) TEXAS 398 71

Home Address: SAME (Street & No.) (City) (State) (Phone)

In case of emergency notify: OLIN H. COLE (Name) SAME (Address) FATHER (Relationship) (Phone)

Age: 25 Date of Birth: 1/23/32 Place of Birth: VERNON, TEX Sex: M Height: 5-9 Weight: 160

Condition of Health: EXCELLENT State Physical Defects: NONE

Time lost in last 5 years due to illness: 0 Selective Service Classification: VET

Citizenship: _____ Can you furnish a Birth Certificate? YES No. of Dependents: 1

Marital Status (Check one): Single: ☒ Married: _____ Widowed: _____ Separated: _____ Divorced: _____ Date of Marriage: _____

Do you own your home? NO Rent? _____ Live with relatives? YES Do you own an automobile? _____

Can you accept immediate employment? YES If not, how soon? _____ Are you a member of the Communist party? NO

Will you accept night work? YES Will you accept transfer out of state? YES Locality preferred: DENVER OR DALLAS

Have you ever been arrested? NO If so, explain: _____

Has bond ever been refused or cancelled? NO What salary do you expect? \$400-450 MONTH

What income do you have other than your salary? ACTIVE RESERVE Source: _____

How much do you owe? NOTHING For what? _____

Amount of life insurance carried: NONE Do you carry health or life insurance? NO

Circle last grade completed in school: 1 2 3 4 5 6 7 8 9 10 11 11 (College) 1 2 3 4 (Post-grad)

In which quarter of your class did you rank? 2nd What percentage of college expenses did you pay? Half

What is your typing speed? 30 (wpm) Shorthand? _____ (wpm) Office machines operated: _____

What languages do you speak? _____ State your hobbies: GOLF

Are you related to any officers, directors or employees of this company? NO Names: _____

What types of positions have you held? _____

Who referred you to our company? NO ONE State briefly your qualifications for the work for which you are applying: 4 yrs. MILITARY FLYING EXPERIENCE, 1000 HOURS

APPLICANT'S STATEMENT

I hereby agree, if accepted for employment, to cheerfully accept all rules and regulations, to perform all duties assigned to the best of my ability, and to be responsible for company property entrusted to my care. Furthermore, I agree to acquiesce myself with company policy and abide thereby. I hereby authorize investigation of all statements contained in this record. I certify that such investigation is true, and understand that misrepresentation or omission of facts called for is cause for separation from the company. 50

(Signature)

Howard F. Cole

	LOCATION	DATES	COURSES	GRADUATED
High School	Wichita Falls, Tex.	1941 1944	STANDARD	YES
College	Wichita Falls Senior High	1946 1948		YES
University	Midwestern	1950 1953	Business Admin	No
Other				

If you did not graduate, why did you leave school? TO ENTER SERVICE

Of what fraternal orders or clubs are you a member?

Check college activities in which you were successful: Athletics: ☒ Music: ☐ Dramatics: ☐ Class offices: ☐ Societies: ☒

EMPLOYMENT RECORD

(Start with MOST RECENT employment. Explain lengthy periods of unemployment. Go back at least five years.)

DATES (Mo & Yr)		EMPLOYER	MAILING ADDRESS	MONTHLY EARNINGS	POSITION HELD	REMARKS
From	To					
SEPT 54	MAR 57	USMC		\$450	1st Lt	RECEIVED IN USMC
MAY 53	SEPT 54	USN		\$100	Naval Cadet	RECEIVED IN USMC
		STUDENT				

MILITARY RECORD

Branch and date of entry: SEPT 54 - MAR 57 USMC MAY 53 - SEPT 54 USN USMC
Type of discharge: Honorable

State full details of Reserve affiliation: ACTIVE RESERVE

REFERENCES

(List three persons who have known you for five years or longer, to whom we may refer for information as to your character, habits, initiative, ability, etc. DO NOT REFER TO RELATIVES OR FORMER EMPLOYERS.)

NAME	MAILING ADDRESS	YEARS KNOWN	OCCUPATION
MR. W.D. GALT	979 CLOISTER RD, DALLAS	15	NATIONAL GUARDIAN
MR. J.L. EWING	2811 WENDON, WICHITA FALLS	10	ACCOUNTANT
MR. J.C. TATE	1307 TAYLOR, WICHITA FALLS	10	MINISTER

DO NOT WRITE BELOW THIS LINE

Employed on: _____ Starting rate: _____ Effective date: _____

Location: _____ Department: _____

Remarks: _____ Date of physical exam: _____

Approved by: _____ (Dept Representative) _____ (Employment Mgr) _____ (Personnel Director)

**APPLICANTS FOR PILOT, HOSTESS, MAINTENANCE OR COMMUNICATIONS WORK
MUST FILL IN APPROPRIATE SPACES ON THIS PAGE**

PILOTS**REQUIREMENTS:**

1. **EDUCATION:** High school and college preferred
2. **AGE:** Not under 21 nor over 30 years
3. **WEIGHT:** Minimum 150
4. **HEALTH:** Able to pass Class I CAA physical exam
5. **VISION:** 20/20 with or without correction
6. **LICENSES:** CAA Commercial Pilot, CAA Instrument Rating
7. **FLIGHT TIME:** Minimum 5000 hours
(5000 hour time must be substantiated by certified log or records)

Pilot Certificate No.: 1331116 Grade: COMMERCIAL Instructor's rating: _____

Aircraft Equipment Rating: SINGLE - MULTI ENG. (Water) _____

Total Hours: 1000 Night: 200 Cross Country: 100 Hours as: (First Pilot) 900 (Copilot) 100

List types of aircraft flown: FI-7, F9F-236, FV-2, F6F, SNB, SNJ

Issued on: (Type of aircraft) SNB (City) PENNSACOLA FLA Date: OCT 13, 1953

Instrument Time: (Solo) 100 (Simulator) 100 2. Link: 100 Type rating: STANDARD

What military pilot rating do you hold: STANDARD CAA Nature and date of waivers: NONE

What training have you had in: 1. Meteorology? US. NAVAL SCHOOL OF PRE-FLIGHT 2. Navigation? SAME

3. Radio? _____ 4. Aircraft instruments? _____

Give date, place, type aircraft, circumstances and penalties on:

1. Accidents you have had resulting in injury or death of passengers: NONE
2. Violations with which you have been charged: NONE

State total hours flown and equipment used in last six months: SNB - 100 HOURS - F9F-6 - 50 HOURS

Date of last physical exam: 14 APRIL 57 Class: MILITARY Waivers: 0

MECHANICS

Show amount of aircraft experience in each type of work for which qualified:

TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)
Aircraft Engine Maintenance		Airplane Overhaul		Line Service	
Aircraft Engine Overhaul		Instrument and/or Electrical		Special Training	
Airplane Maintenance		Sheet Metal		Other	

Do you hold valid C.A.A. licenses? "A" No. _____ "E" No. _____ "A & E" No. _____

Types of airplanes or engines familiar with and amount of experience on each: PRACTICALLY ALL MY EXPERIENCE IS IN SINGLE ENGINE EQUIP. MOSTLY JET.

fol 470

COMMUNICATIONS

Radio operator license held: (If any): _____ (Class): _____ (Expires?): _____

How much total experience as radio-telephone operator? _____ Teletype operator? _____

If you are applying for radio maintenance work, give detailed account of specialized training and experience: _____

DEPENDENTS

Are there any dependents (Check whether totally or partially dependent)

NAME	AGE	RELATIONSHIP TO YOU	STATUS

FAMILY HISTORY

Father's Name MARK T. STEARNS SR. Birthplace CANADA
 Mother's Name ANNE KATHLEEN STEARNS Birthplace CANADA
 No. of Sisters NONE No. of Brothers NONE If married, birthplace of husband or wife

EMPLOYMENT RECORD

Include all positions since leaving and during school in chronological order. Start with your present or most recent position. Be exact as to dates.

TIME EMPLOYED		EMPLOYER	ADDRESS	POSITION HELD OR TYPE OF DUTY	NO. EMPLOYED	REASON FOR LEAVING
From	To	Give Full Name of Company, Individual, Institution or Agency	City State			
Mo. Yr.	Mo. Yr.	SEPT 1953 SEPT 1957	VS-36 NAS NORFOLK VIRGINIA	PILOT	425	
Mo. Yr.	Mo. Yr.	SUMMERS OF 1950 1951 & 1952	NEW HAVEN RR BOSTON MASS	ASST. MECHANIC	280	
Mo. Yr.	Mo. Yr.		City State			
Mo. Yr.	Mo. Yr.		City State			
Mo. Yr.	Mo. Yr.		City State			
Mo. Yr.	Mo. Yr.		City State			
Mo. Yr.	Mo. Yr.		City State			
Mo. Yr.	Mo. Yr.		City State			
Mo. Yr.	Mo. Yr.		City State			

EDUCATION

Give below a complete record of schools attended:

EDUCATION	NAME OF SCHOOL	LOCATION	YEARS ATTENDED	DEGREE	REMARKS
Elementary	EDWARD E. HALE	EVERETT, MASS			
High	ENGLISH HIGH	BOSTON, MASS	1946 1950		
Academy or Trade					
Business					
University	NORTHEASTERN UNIV.	BOSTON, MASS	1950 1952	NO	
Nursing					
Other					

If you attended a university or college and failed to obtain your degree, state why ENLISTED IN NAVY AIR FORCE

In what quarter of your class did you graduate? Check the college records in which you were enrolled
 1st 2nd 3rd 4th

What fraternities or clubs are you a member of?

What proportion of your college expenses, if any, did you earn? ALMOST ALL

What hobbies do you have?

What languages do you speak and write?

Form 1-1-54



Continental Air Lines

MR. WEILER
MR. CRAMP

APPLICATION FOR EMPLOYMENT

(ATTACH
PICTURE
HERE)

TO ALL APPLICANTS:

If you are completing this form in our Employment Office, please complete only the first page, then hand it to the receptionist. The receptionist will ask you to complete the application form, or will otherwise advise you. If you are completing this form at any other point, please answer all questions fully. A recent photograph, of sufficient size to show features clearly, is required on all complete applications.

Type of work applied for: CO-PILOT Date: 6-27-57

Name (Print or type): GEORGE, SYERL CLARK Sex: M Soc. Sec. No. 572 26 1849

Present address: 50444 Colfax, Hollywood, Calif. Phone: PO 2-6925

Home address: 50444 Colfax, Hollywood, Calif. Phone: PO 2-6925

In case of emergency notify: Walter H. GEORGE, 50444 Colfax, Hollywood, Calif. 90025

Age: 29 Date of birth: 12-28-27 Place of birth: ST. LOUIS, MO. Sex: M Height: 5'10" Weight: 150

Condition of Health: Good Physical Defects: None

Time lost in last 5 years: None Executive Former Classification: SEA

Citizenship: U.S. Can you furnish Birth Certificate: YES No. of Dependents: 3

Marital Status (Married, Single, Widowed, Divorced, Separated): Married Date of Marriage: 7-25-47

Do you own your home? No Do you own an automobile? YES

Can you accept immediate employment? YES How soon? Now Are you a member of the Communist party? NO

Will you accept night work? YES Will you accept transfer out of state? YES Locality preferred: DE MECA

Have you ever been arrested? NO Explain: None

Has bond ever been refused or cancelled? NO What salary do you expect? None

What income do you have from other sources? None Source: None

How much do you owe? 1500.00 For what? AUTO-FURNITURE

Amount of life insurance carried: 10000.00 Do you carry hospitalization insurance? YES

Circle last grade completed in school: 1 2 3 4 5 6 7 8 9 10 11 12 (College) 1 2 3 4 (Postgrad) 12

In which quarter of your class did you rank? 1st What percentage of college expenses did you earn? 100%

What is your typing speed? 40 (wpm) Shorthand? None Office machines operated: None

What languages do you speak? English State your hobbies: WORKING, SWIMMING, TRAVEL

Are you related to any officers, directors or employees of this company? NO Names: None

What types of positions have you held? None

Who referred you to our company? None State briefly your qualifications for the work for which you are applying:

I HAVE BEEN FLYING WITH AIRLINES FOR THE LAST 14 YEARS. AM CURRENTLY IN THE TYPE OF EXPERIENCE USED BY AIRLINES. I HAVE THE NECESSARY LICENSES.

APPLICANT'S STATEMENT

I hereby agree, if accepted for employment, to cheerfully keep all rules and regulations, to perform all duties assigned to me to the best of my ability, and to be responsible for company property entrusted to my care. Furthermore, I agree to acquiesce in any investigation of my life and activities, and to be responsible for company investigation of all statements contained in this record. I certify that such statements are true, and understand that misrepresentation or omission of facts called for is cause for separation from the company's service.

George Syerl Clark

EDUCATIONAL RECORD

TYPE	NAME	LOCATION	DATES	COURSES	GRADUATE
University	MUSCATEL GRADUATE	ROSEMONT, CALIF	1941	GENERAL	YES
High School	EL MONTE HIGH	EL MONTE, CALIF	1941	METEOROLOGY	YES
Business			1945	BUSINESS	YES
Community					
Other					

If you did not graduate, why did you leave school?

Are you a member of any fraternal order or club? NONE

What college activities in which you were successful? Athletics: _____ Music: _____ Dramatics: _____ Other activities: _____

EMPLOYMENT RECORD

(Start with MOST RECENT employment. Explain lengthy periods of unemployment. Go back at least five years.)

DATE (To & From)	EMPLOYER	MAILING ADDRESS	MONTHLY EARNINGS	POSITION HELD	REASON FOR LEAVING
5-14-52 7-1-52	SLICK AIRWAYS	3000 CHILBOURN, BURBANK, CALIF	500.00	CO-PILOT	FURLONG
1-54 5-14-52	DOUGLAS OVERHEAD PROJECTS	2539 PARKWAY DR. EL MONTE, CALIF	475.00	CARPENTER	AIRLINES
12-51 1-54	(SELF EMPLOYED)	1441 1/2 COLINA, NO. HANFORD, CALIF	UNEMPLOYED	OWNER	FAMILY
12-50 12-51	GEORGE FLYING SERV.	1441 1/2 COLINA, CALIF	UNEMPLOYED	OPERATOR	RELATIONS
	BOEING AIRCRAFT	SEATTLE, WASH.	400.00	A/E MECHANIC	WENT INTO BUSINESS

MILITARY RECORD

Branch and dates of service: U.S. NAVY - 3-23-45 - 7-10-46 Type of discharge: HONORABLE

State full details of Reserve affiliation: NONE

REFERENCES

(List three persons who have known you for five years or longer, to whom we may refer for information as to your character, habits, attitude, ability, etc. DO NOT REFER TO RELATIVES OR FORMER EMPLOYERS.)

NAME	MAILING ADDRESS	YEARS KNOWN	OCCUPATION
BOB NIMCHESKI	1965 VALENTIA, DENVER	7 years	CO-PILOT
WALT ZAUSSKA	595 VENTURA - ALTAMIRA, CALIF	5 years	FLIGHT ENGINEER
DR. CRICKSON	1441 1/2 PROVIDENCIA, BURBANK, CALIF	5 years	CO-PILOT

DO NOT WRITE BELOW THIS LINE

Employed as: _____ Starting rate: _____ Effective date: _____

Department: _____

Date of physical exam: _____

Approved: _____ (Dept. Representative) _____ (Employment Mgr.) _____ (Personnel Director)

APPLICANTS FOR PILOT, HOSTESS, MAINTENANCE OR COMMUNICATIONS WORK
MUST FILL IN APPROPRIATE SPACES ON THIS PAGE

PILOTS

EDUCATION

1. EDUCATION: High school, some college preferred
2. AGE: Not under 21 nor over 50 years
3. HEIGHT: Minimum 5'3"
4. EYES: Ability to pass Class I CAA physical exam
5. VISION: 20/20 without correction
6. RECORDS: CAA Commercial Pilot, CAA Instrument rating
7. FLIGHT TIME: Minimum 2000 hours
(Flight time must be substantiated by certified log or record)

Log Books
in Calif.

Pilot Certificate No. 694251 Grade: 17 Instructor's rating: -

Aircraft Equipment Rating: (Land) SEI-MEL-INSTRUMENT (Water): -

Total Hours: 2100.53 Instrument: 1182.52 Cross Country: 1174.13 Hours as: (First Pilot): 1145.35 (Copilot): 874.18

List types of aircraft flown: DC-6A - DC-4 - C-46 - Twin Apache - various light aircraft

Soloed on: (Type of Aircraft): Boeing Stearman At: (City): CI Monte Carlo Date: 1946

Instrument Time: (Actual): 3412.0 (Simulated): 1. Hood: 37.65 2. Link: 26.40 Type rating: -CAN

What military pilot rating do you hold? - Nature and date of waivers: NONE

What training have you had in: 1. Meteorology? NONE 2. Navigation? SLICK AIRWAYS - (PRIVATE)

3. Radio? SLICK AIRWAYS - (PRIVATE) 4. Aircraft instruments? SLICK AIRWAYS

Give date, place, type aircraft, and conditions and penalties on:

1. Accidents you have had resulting in injury or death of passengers: NONE

2. Violations with which you have been charged: NONE

State total hours flown, and equipment used in last six months: 510.55 - DC-4A - DC-4 - C-46

Date of last physical exam: DEC - 5 - 1956 Class: 1st Waiver: NONE

MAINTENANCE

Show amount of aircraft experience in each type of work for which qualified:

TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)
Aircraft Engine Maintenance		Aircraft Overhaul		Eng. Service	
Aircraft Engine Overhaul		Instrument and/or Electrical		Ground School	
Aircraft Maintenance		Sheet Metal		Other	

Do you hold valid C.A.A. License? A: No B: No "A & B" No

List types of airplanes or engines familiar with and amount of experience on each:

Location:

Department:

fol 4751

COMMUNICATIONS

Radio operator license held: (No.): 11F2563 (Class): 3rd CLASS (Rating): PERMANENT

How much total experience as radio-telephone operator? _____ Teletype operator? _____

If you are applying for radio maintenance work, give detailed account of specialized training and experience: _____

Continental Air Lines, Inc.

APPLICATION FOR EMPLOYMENT

The information furnished on this blank will be treated strictly confidential. It will be to the applicant's advantage to answer each question fully and accurately. The use of this blank does not indicate there are any obligations on the part of the applicant to the company. This application is submitted, with the understanding that the company will be free to use the information furnished and that a physical examination satisfactory to the company will be required before employment can be secured.

I agree that all information given by me in this application is correct to the best of my knowledge and belief and that any statement made herein or any concealment of facts shall be considered and treated as a fraud and shall result in my discharge from the service of this company. I agree that my employment by this company is for no definite period of time. How is my application approved or rejected by the Personnel Office.

Signature of applicant

Mark T. Stearns

PERSONAL HISTORY

Date 28 May 1957

Type of Work or Position PILOT

Print or Type Name

STEARNS

MARK

THORNTON

CLAU

Present Address

AIR AND SUBMARINE SQUADRON THIRTY SIX & FLEET P. O. BOX 11

Home Address

122 GILBERT ROAD WEST ROXBURY 12 MASSACHUSETTS

In case of emergency notify:

MARK T. STEARNES SR. FATHER 122 GILBERT RD. WEST ROXBURY MASS.

Age

26

Date of Birth

DEC 6 1929

Place of Birth

BOSTON MASS

Raised at

BOSTON MASS

Social Security No

023-22-1527

Salary Expected \$

Local by Post Office

Descent

AMERICAN

U. S. Citizen

YES

Native or Naturalized

NATIVE

Will you accept temporary work?

YES

Will you accept all work?

YES

If employed will you furnish a birth certificate or other proof of citizenship immediately?

YES

What is your selective service classification?

Has bond ever been returned to you or cancelled?

NO

Own your home

NO

Buy Home

NO

Rent

NO

Board

YES

Live with parents

NO

Single

YES

Married

NO

Date of marriage

None

Widowed

NO

Separated

NO

Divorced

NO

What is the present condition of your health?

EXCELLENT

What physical condition do you have?

NONE

Height

5' 5"

Weight

140

Color of eyes

BLUE

Color of hair

BROWN

Occupation

PILOT

Class

NO

Rank

None

Of what military organization, if any, are you a member?

UNITED STATES NAVY

Have you any objection to being transferred to another state in the course of your employment?

NO

Are you a member of the Communist Party?

NO

Are you a member of the Communist Party?

NO

FINANCIAL

Amount of life insurance carried \$

10,000

Do you carry health and accident insurance?

NO

Do you have other than your salary?

NONE

Have you any debts or financial obligations (inc. alimony)?

NO

If "Yes" explain fully

What is your present plan of paying present obligations?

per month \$

58

203

REFERENCES

Give names and addresses of four persons you have known for five years or longer, and to whom you can refer to as to your character, habits and ability. Do not refer to any relative or an employee of this company:

NAME	ADDRESS		OCCUPATION
	Street and Number	City and State	
DR. HENRY W. HUBBARD	POST OFFICE BOX 235	MONTEREY, CALIF.	USE PROFESSOR
DR. ALBERT TROMBET	481 ELIOT ST.	MILTON, MASS.	OPTOMETRIST
MR. HARRY CLARK	122 Channing st.	STOUGHTON, MASS.	SALESMAN
MR. JOSEPH McMEIKEN	122 GREATON ROAD	WEST ROXBURY, MASS.	REAL ESTATE AGENT FOR STATE OF MASS.

RELATIVES IN COMPANY

Are you related to any officers, directors or employees of this company? Yes or No If so list below:

NAME	POSITION	RELATIONSHIP

IF YOU ARE QUALIFIED FOR ANY OF THE FOLLOWING POSITIONS, PLEASE ANSWER ANY OR ALL OF THE QUESTIONS

PILOT

(THE FOLLOWING FLYING TIMES MUST BE SUBSTANTIATED BY CERTIFIED LOG OR RECORD)

Pilot 13/1968 Grade COMMERCIAL Aircraft Equipment MULTI-ENG Water Water
 Ratings: Land Land
 Licenses or Ratings: Licenses or Ratings
 Hours as: Hours as
 (1) First Pilot 275 (2) Co-Pilot 450
 Types of Airplane Flown: SNJ, TUN, SNB BECHCRAFT, T28 TRAINER, GRUMMAN S2F
 Date of 17 MARCH 1954 SNJ Airplane at (City) PENSACOLA FLA Date 1954
 Military airplane pilot rating do you hold? STANDARD WHITE CARD Nature and Date of license waivers Nature and Date of license waivers
 (1) Meteorology? (1) Meteorology? (2) Navigation? (2) Navigation?
 (3) Aircraft Instruments? (3) Aircraft Instruments?
 (4) Airplane, date, type airplane, circumstances and penalties (4) Airplane, date, type airplane, circumstances and penalties
 (5) Accidents you have had resulting in injury or death of passengers: NO
 (6) Accidents you have had resulting in injury or death of passengers: NO
 (7) Accidents you have had resulting in injury or death of passengers: NO
 (8) Accidents you have had resulting in injury or death of passengers: NO
 (9) Accidents you have had resulting in injury or death of passengers: NO
 (10) Accidents you have had resulting in injury or death of passengers: NO
 (11) Accidents you have had resulting in injury or death of passengers: NO
 (12) Accidents you have had resulting in injury or death of passengers: NO
 (13) Accidents you have had resulting in injury or death of passengers: NO
 (14) Accidents you have had resulting in injury or death of passengers: NO
 (15) Accidents you have had resulting in injury or death of passengers: NO
 (16) Accidents you have had resulting in injury or death of passengers: NO
 (17) Accidents you have had resulting in injury or death of passengers: NO
 (18) Accidents you have had resulting in injury or death of passengers: NO
 (19) Accidents you have had resulting in injury or death of passengers: NO
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 (92) Accidents you have had resulting in injury or death of passengers: NO
 (93) Accidents you have had resulting in injury or death of passengers: NO
 (94) Accidents you have had resulting in injury or death of passengers: NO
 (95) Accidents you have had resulting in injury or death of passengers: NO
 (96) Accidents you have had resulting in injury or death of passengers: NO
 (97) Accidents you have had resulting in injury or death of passengers: NO
 (98) Accidents you have had resulting in injury or death of passengers: NO
 (99) Accidents you have had resulting in injury or death of passengers: NO
 (100) Accidents you have had resulting in injury or death of passengers: NO

Telephone License Class RESTRICTED Date of 1/1/19 Original License Class No. Words 100 per min. or equiv. Key 100
 Radio License Class No Date 1/1/19 Other License Held License Held Radio on Typewriter

☐ any other training or knowledge in radio

MECHANICAL

License No. 1 Expiration Date 1/1/19 State Amount of Aeronautical Experience (in years) 1 Line Maintenance 1 Own Complete Set of Tools? 1
 A Number 1

Other mechanical experience

OFFICE

State amount of experience in following: Filing 1 Dictation 1 Machines 1
 Typing Speed? 1 Typing Speed? 1 Other Business 1
 Typing Speed—Wds. per min. 1 Typing Speed? 1 Wds. per min. 1 Shorthand Speed? 1 Wds. per min. 1

State amount of experience in months or years in the following

Accountant		Computer Operator		Anti-Aircraft Clerk	
Auditor		IRM Operator		Stock Clerk	
Billing Clerk		Pay Roll Clerk		Other	
Bookkeeper		Shipping Clerk			

REMARKS:

INSTRUCTIONS TO EMPLOYING OFFICE

Employing office or his clerk must see that applicant fills out one copy of form P-134 for each reference checked by interviewer. These are to be attached to this application and promptly forwarded to Personnel Department, Denver, after applicant has been qualified by medical examination and the portion below has been filled out.

Employed on 1/1/19 Effective Date 1/1/19

Location 1 Department 1

(EMPLOYING OFFICE MUST SIGN THIS AFFIRMATION)

I have personally reviewed this application and recommended employment if investigation of references proves satisfactory.

(Personal Signature of Employing Office) 1 (Date) 1/1/19

Approved by 1

Continental Air Lines

APPLICATION FOR EMPLOYMENT

If you are applying for employment with Continental Air Lines, please complete only the following form. Do not fill in the space for the photograph. The photograph will be taken by the company. If you are applying for employment, you must also submit a recent photograph of sufficient size to show features clearly. It is required on all completed applications.

Type of work applied for: Accepted Date: June 31, 1957

Name (Print or type): Charles Elmer II For. Sec. No. 603 12 0103

Present Address: 1914 N. Willow St., Anaheim, Calif. Phone: Kayetone 32517

Home Address: SPRING ST. ANAHEIM Phone: 707 7087

Place of birth: 1914 N. Willow St., Anaheim, Calif. Wife: 32517

Place of residence: 1914 N. Willow St., Anaheim, Calif. Sex: M Height: 6 ft. Weight: 160 lb.

Condition of health: Excellent State Physical Defects: None

Time lost in last 5 years due to illness: None Selective Service Classification: 5-A

Citizenship: U.S. Can you furnish a Birth Certificate? Yes No. of Dependents: three

Marital Status (Check one): Single: Married: X Widowed: Separated: Divorced: Date of Marriage: 5/13/57

Do you own your home? X Rent? Live with relatives? Do you own an automobile? Yes

Can you accept immediate employment? No If not, how soon? one week Are you a member of the Communist Party? No

Will you accept night work? Yes Will you accept transfer out of state? Yes Locality preferred: Quincy

Have you ever been arrested? No If so, explain:

Has bond ever been refused or canceled? No What salary do you expect? Upon

What income do you have other than your salary? None Source:

How much do you owe? 100.00 For what? automobile

Amount of life insurance owned: 8,000.00 Do you carry life insurance? Yes

Circle last grade completed in school: 1 2 3 4 5 6 7 8 9 10 11 12 (College) 1 2 3 4 (Degree)

In which quarter of your class did you rank? First What percentage of college expenses did you pay? 100%

What is your typing speed? (wpm) Shorthand? (wpm) Office machines operated: None

What languages do you speak? None State your hobbies: Flying, swimming

Are you related to any officers, directors or employees of this company? No Names:

What types of positions have you held? fabrication control dispatcher, inspector

Who referred you to our company? W. M. Hilox State briefly your qualifications for the position for which you are applying: I have a commercial pilot license with instrument and flight instructor ratings and 1231:00 hrs. flying time

EMPLOYEE'S STATEMENT

I hereby agree, if accepted for employment, to cheerfully keep all rules and regulations, to perform all duties assigned to me by my company, and to be responsible for company property entrusted to my care. Furthermore, I agree to sign and comply with company policy and rules thereby. I hereby authorize investigation of all statements contained in this report. I certify that such statements are true and understand that misrepresentation or omission of facts called for is cause for separation from the company's service.

(Signed) Charles E. Elmer II

EDUCATIONAL RECORD

TYPE	NAME	LOCATION	DATES	COURSES	GRADUATED?
Elementary	Saint Matthias	Huntington Park, Cal.	1936		
High	Huntington Park, HS	Huntington Park, Cal.	1944		yes
	Verdugo Hills, HS	Tujunga, Cal.	1948	comm. course	yes
Trade	Fullerton Air Service	Fullerton, Cal.	1954	comm. pilot	
			1957	inst. flt. inst	yes
Business					
University	Cameron Jr. College	Lawton, Okla.	1953	accounting	no
	Fullerton Jr. Col.	Fullerton, Cal.	1956	math, physics	no
Other					

If you did not graduate, why did you leave school? still plan to complete 2 yrs. of college

Of what fraternal orders or clubs are you a member? none

Check college activities in which you were successful: Athletics: _____ Music: _____ Dramatics: _____ Class offices: _____ Societies: _____

EMPLOYMENT RECORD

(Start with MOST RECENT employment. Explain lengthy periods of unemployment. Go back at least five years.)

DATE (Mo & Yr.)		EMPLOYER	MAILING ADDRESS	MONTHLY EARNINGS	POSITION HELD	REASON FOR LEAVING
From:	To:					
2/58		Northrop Aircraft Inc.	500 E. Orangethorpe Anaheim, Calif.	\$390.00	project dispatcher	still employed
8/51	2/56	Harvey Machine Company, Inc.	19200 S. Western Torrance, Calif.	\$350.00	prod. control	improve position
2/50	8/51	Grayson Heat Controls	Imperial Hwy. Lynwood, Calif.	\$300.00	inspector	improve position

MILITARY RECORD

Branch and dates of service: U.S. Navy and U.S. Army Type of discharge: honorable

State full details of Reserve affiliation: None

REFERENCES

(List three persons who have known you for five years or longer, to whom we may refer for information as to your character, habits, initiative, ability, etc. DO NOT REFER TO RELATIVES OR FORMER EMPLOYERS.)

NAME	MAILING ADDRESS	YEARS KNOWN	OCCUPATION
Gale M. Cubarly	1640 E. Elm St. Anaheim, Calif.	7 yrs.	I.B.M. engineer
Thomas Goodwin	1916 E. Willow St. Anaheim, Calif.	5 yrs.	city engineer
Ronald W. Donaghy	642 W. Baker St. Fullerton, Calif.	15 yrs.	Northrop dispatcher

DO NOT WRITE BELOW THIS LINE

Approved by: _____ Starting rate: ✓ Effective date: _____

Department: _____

Date of physical exam: 63

Signature: _____ (Dept. Representative) - 5 _____ (Employment Mgr) _____ (Personnel Director)

**APPLICANTS FOR PILOT, HOSTESS, MAINTENANCE OR COMMUNICATIONS WORK
MUST FILL IN APPROPRIATE SPACES ON THIS PAGE**

QUALIFICATIONS:

1. **EDUCATION:** High school, some college preferred
2. **AGE:** Not under 21 nor over 30 years
3. **WEIGHT:** Minimum 5'6"
4. **HEALTH:** Ability to pass Class I CAA physical exam
5. **VISION:** 20/20 without correction
6. **LICENSES:** CAA Commercial Pilot, CAA Instrument rating
7. **FLIGHT TIME:** Minimum 2000 hours
(Flight time must be substantiated by certified log or record)

PILOTS

Pilot Certificate No: 1303052 Grade: commercial Instructor's rating: 1303052

Aircraft Equipment Ratings: (Land): airplane single engine (Water): ---

Total Hours: 1031:00 Night: 37:00 Cross Country: 103:00 Hours as: (First Pilot): 916:00 (Copilot): ---

List types of aircraft flown: 0-450 h.p. single engine, T-50 twin cessna

Enrolled on: (Type of Aircraft): inscombe B-A At: (City): Fullerton Date: Sept. 21, 1964

Instrument Time: (Actual): 00 (Simulated): 1. Hood: 60:00 2. Link: 4:00 Type rating: C.A.A.

What military pilot rating do you hold? none Nature and date of waiver: none

What training have you had in: 1. Meteorology? 55 hrs ground school 2. Navigation? 60 hrs ground school, 64 hrs flight

3. Radio? 40 hrs ground school I.L.S. and A. Aircraft instruments? 30 hrs ground school

Give date, place, type aircraft, circumstances and penalties on:

1. Accidents you have had resulting in injury or death of passengers: none

2. Violations with which you have been charged: none

State total hours flown and equipment used in last six months: 300 hrs, single engine to 165 h.p.

Date of last physical exam: June 3, 1967 Class: two Waiver: none

MECHANICS

Show amount of aircraft experience in each type of work for which qualified:

TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)
Aircraft Engine Maintenance		Airplane Overhaul		Line Service	
Aircraft Engine Overhaul		Instrument and/or Electrical		Special Training	
Airplane Maintenance &		Sheet Metal		Other	

Do you hold valid CAA licenses? "A" No. _____ "E" No. _____ "A & E" No. _____

Types of airplanes or engines familiar with and amount of experience on each: _____

COMMUNICATIONS

Radio operator license held: (No.): _____ (Class): _____ (Expires?): _____

How much total experience as radio-telephone operator? _____ Teletype operator? _____

If you are applying for radio maintenance work, give detailed account of specialized training and experience: _____

Continental Air Lines

APPLICATION FOR EMPLOYMENT

ATTACH
PHOTOGRAPH
HERE

ALL APPLICANTS:

If you are completing this form in our Employment Office, please complete only the first page, then hand it to the receptionist. The receptionist will ask you to complete the application form, or will otherwise advise you. If you are completing this form at any other point, please answer all questions fully. A recent photograph, of sufficient size to show features clearly, is required on all completed applications.

Type of work applied for: Co-Pilot Date: April 1, 1957

Name (Print or type): Bryant, James Baird Soc. Sec. No. 463 52 8170
(Last) (First) (Middle)

Present Address: Lincoln Hts. Apt. #1 Odessa Texas Phone: FE2-2142
(Street & No.) (City) (State)

Home Address: 2112-26th St. Lubbock Texas Phone: PC3-0956
(Street & No.) (City) (State)

In case of emergency notify: Mrs. James B. Bryant, Lincoln Hts. #1 Wife FE2-2142
(Name) (Address) (Relationship) (Phone)

Age: 21 Date of Birth: 12-18-35 Place of Birth: Dallas, Texas Sex: M Height: 68 1/2" Weight: 160

Condition of Health: Excellent State Physical Defects: None

Time lost in last 5 years due to illness: None Selective Service Classification: I-R

Citizenship: U.S.A. Can you furnish a Birth Certificate? yes No. of Dependents: 1

Marital Status (Check one): Single: Married: ✓ Widowed: Separated: Divorced: Date of Marriage: 11-24-54

Do you own your home? No Rent? yes Live with relatives? no Do you own an automobile? yes

Can you accept immediate employment? yes If not, how soon? (Two Weeks) Are you a member of the Communist party? no

Will you accept night work? yes Will you accept transfer out of state? yes Locality preferred: Dallas

Have you ever been arrested? No If so, explain:

Has bond ever been refused or cancelled? No What salary do you expect? \$400 per month

What income do you have other than your salary? None Source:

How much do you owe? \$2,000 For what? 1957 Chevrolet

Amount of life insurance carried: 2,220 dollars Do you carry hospitalization insurance? yes

Circle last grade completed in school: 1 2 3 4 5 6 7 8 9 10 11 12 (College) 2 3 4 (Degrees) High School

In which quarter of your class did you rank? First What percentage of college expenses did you earn? 25-75

What is your typing speed? 70 (wpm) Shorthand? (wpm) Office machines operated: Adding machine

What languages do you speak? English State your hobbies: Sports, Cars

Are you related to any officers, directors or employees of this company? No Names:

What types of positions have you held? Instructor

Who referred you to our company? Jack Little (AME) State briefly your qualifications for the work for which you are applying:
My CFA License and my flying experience are my qualifications.

APPLICANT'S STATEMENT

I agree, if accepted for employment, to cheerfully keep all rules and regulations, to perform all duties assigned to the best of my ability, and to be responsible for company property entrusted to my care. Furthermore, I agree to acquaint myself with company policy and abide thereby. I hereby authorize investigation of all statements contained in this record. I certify that such statements are true, and understand that misrepresentation or omission of facts called for is cause for separation from the company's service.

(Signed)

James B. Bryant

66

[fol. 484]

EDUCATIONAL RECORD

TYPE	NAME	LOCATION	DATES	COURSES	GRADUATE
Elementary	Cockrell H. H.	Dallas, Texas	1942-1950	Academic	YES
High	Lubbock Senior High	Lubbock, Texas	1950-1954	Academic	yes
College					
Postgraduate					
University	Texas Technological College	Lubbock, Texas	1954-1955	Engineering	NO
Other					

If you did not graduate, why did you leave school? To study aviation at a private school

Of what fraternal orders or clubs are you a member?

What college activities in which you were successful: Athletics: ☒ Music: ☒ Dramatics: ☒ Class officers: ☒ Societies: ☒

EMPLOYMENT RECORD

(Start with MOST RECENT employment. Explain lengthy periods of unemployment. Go back at least five years.)

DATE (Mo. & Yr.)		EMPLOYER	MAILING ADDRESS	MONTHLY EARNINGS	POSITION HELD	REASON FOR LEAVING
From	To					
1956	Now	Present Adessa Hair Service	Box 3133, Odessa, Texas	\$400	Instructor	Present
1954	Now	Chapin Aviation Inc.	Box 221 E, Rt 3-Lubbock, Texas		Pilot	Advancement
		Student				

MILITARY RECORD

Branch and dates of service:

Type of discharge:

State full details of Reserve affiliation:

REFERENCES

(List three persons who have known you for five years or longer, to whom we may refer for information as to your character, habits, initiative, ability, etc. DO NOT REFER TO RELATIVES OR FORMER EMPLOYERS.)

NAME	MAILING ADDRESS	YEARS KNOWN	OCCUPATION
Forrest B. Coburn	4221 Backdale, Dallas, Texas	15	Waste Department
J. E. Edder	2704 - 19th, Lubbock, Texas	7	Businessman
Mrs. W. B. Stockman	2122 - 16th, Lubbock, Texas	7	Retired

DO NOT WRITE BELOW THIS LINE

Starting rate: Effective date:

Department:

Date of physical exam:

(Dept. Representative) (Employment Mgr.) (Personnel Director)

APPLICANTS FOR PILOT, HOSTESS, MAINTENANCE OR COMMUNICATIONS WORK
MUST FILL IN APPROPRIATE SPACES ON THIS PAGE

PILOTS

QUALIFICATIONS:

1. EDUCATION: High school, some college preferred
2. AGE: Not under 21 nor over 35 years
3. HEIGHT: Minimum 5'8"
4. HEAVINESS: Ability to pass Class I CAA physical exam.
5. VISION: 20/40 without correction
6. LICENSES: CAA Commercial Pilot, CAA Instrument rating
7. FLIGHT TIME: Minimum 2000 hours
(Flight time must be substantiated by certified log or record)

Pilot Certificate No.: 1303604 Grade: Comm Instructor's rating: yes

Aircraft Equipment Ratings: (Land): S.E.L. (Water):

Total Hours: 1100 Night: 91 Cross Country: 450 Hours as (First Pilot): 1100 (CofPilot):

List types of aircraft flown: Howard-Cessna (135, 140, 142, 149, 172, 170, 140, 120, 910) Piper, Stearman, Luscombe

Soloed on: (Type of Aircraft): Taylorcraft At: (City): Lubbock, Texas Date:

Instrument Time: (Actual): 5 hrs (Simulated): 1. Hood: 21 hrs 2. Link: 15 hrs Type rating:

What military pilot rating do you hold? None Nature and date of waivers: None

What training have you had in: 1. Meteorology? American Flyers 2. Navigation? American Flyers

3. Radio? American Flyers 4. Aircraft Instruments? American Flyers

Give date, place, type aircraft, circumstances and penalties on: None

1. Accidents you have had resulting in injury or death of passengers: None

3. Violations with which you have been charged: None

State total hours flown and equipment used in last six months: 600 hrs - Cessna - Piper - Stearman - Howard - Luscombe

Date of last physical exam: February 4, 1957 Class: 2nd Waivers: None

MECHANICS

Show amount of aircraft experience in each type of work for which qualified:

TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)	TYPES OF WORK	EXPERIENCE (Years)
Aircraft Engine Maintenance		Airplane Overhaul		Line Service	
Aircraft Engine Overhaul		Instrument and/or Electrical		Special Training	
Airplane Maintenance		Sheet Metal		Other	

Do you hold valid C.A.A. licenses? "A" No. "E" No. "A & E" No.

List types of airplanes or engines familiar with and amount of experience on each:

(Vol. 486)

COMMUNICATIONS

F.C.C. radio operator license held: (No.): 10C1602 (Class): Restricted (Expires?): Indefinitely

How much total experience as radio-telephone operator? _____ Teletype operator? _____

☐ If you are applying for radio maintenance work, give detailed account of specialized training and experience: _____

Continental Air Lines, Inc.

APPLICATION FOR EMPLOYMENT

The information given on this blank will be treated strictly confidential. It is the applicant's responsibility to answer each question fully and accurately. The use of this blank does not obligate the company. This application is valid for 90 days. When considering your future plans will be taken and that a physical examination satisfactory to the company must be passed before employment can be secured.

I agree that all information given by me in this application is correct to the best of my knowledge and belief and that any untrue statements made herein or any concealment of facts shall be cause for and account by me for just cause for discharge from the service of this company. I agree that my employment by the company is temporary until such time as my application is approved or rejected by the Personnel Director.

Stamps or clip two photos of head and shoulders not over 1 1/2 x 1 1/4 inches taken within the last 12 months.

(Do not paste photo)

Signature of applicant

PERSONAL HISTORY

27 APRIL 1957

Type of Work or Position Desired

PILOT

First or Type Name

GREEN

MARION

DEWITT

NECRO

Present Address

734 S. SMITH AVE

E. DORADO, ARKANSAS

ARKANSAS

ARKANSAS

Home Address

734 S. SMITH AVE

E. DORADO, ARKANSAS

ARKANSAS

ARKANSAS

In care of, or notify:

MRS MARION D. GREEN

734 S. SMITH AVE

ARKANSAS

ARKANSAS

Age

27

Date of Birth June 6, 29

Place of Birth E. DORADO, ARK.

Raised at SAME

ARKANSAS

Social Security No.

430-38-7963

Expected \$ 600.00

Locality Preferred DENVER, LOS ANGELES

ARKANSAS

Descent

AMERICAN

U. S. Citizen YES

Native or Naturalized YES

Will you accept temporary work? NO

ARKANSAS

Will you accept night work? YES

If on playground you furnish a sufficient quantity of other proof of citizenship immediately? YES

What is your selective service classification? INSERVICE AT PRESENT

Has bond ever been refused you or cancelled? NO

ARKANSAS

Over your home NO Day Home 18

Rent NO

Are you married? NO

Live with Parents NO

ARKANSAS

Single NO

Married YES

Date of Marriage 29 DEC 1951

Separated NO

Divorced NO

What is the general condition of your health? EXCELLENT

ARKANSAS

What is the general condition of your health? EXCELLENT

What physical defects do you have? NONE

Height 6'0" Weight 190

Eye Color BROWN

Hair Color BLACK

Complexion

Glasses NO

Reason

Do you belong to any military organization, if any, are you a member? USAF AT PRESENT, EXPECT DISCHARGE 1 MAY 57

Have you any objection to being transferred to another state in the course of your employment? NO

Are you a member of the Communist Party? NO

Are you a member of the Communist Party? NO

Height

6'0"

Weight

190

Eye Color

BROWN

Hair Color

Glasses

NO

Reason

Do you belong to any military organization, if any, are you a member? USAF AT PRESENT, EXPECT DISCHARGE 1 MAY 57

Have you any objection to being transferred to another state in the course of your employment? NO

Are you a member of the Communist Party? NO

Are you a member of the Communist Party? NO

Do you carry life insurance carried \$ 10,000

Do you carry health and accident insurance? YES

Do you have other than your salary? NO

Do you have any debts or financial obligations (incl. all debts)? NO

If "Yes" explain fully

Do you have any other than your salary? NO

Do you have any other than your salary? NO

Do you have any other than your salary? NO

DEPENDENTS

List below your dependents (Check whether totally or partially dependent.)

NAME	AGE	RELATIONSHIP TO YOU	BIRTH DATE	TOTAL OR PARTIAL DEPENDENT
ELANOR M. GREEN	34	WIFE	2 July 1922	TOTAL
ROBERT R.	4	SON	5 March 1953	"
ORLA T.	3	DAUGHTER	28 June 1954	"
PETER Y.	2	SON	19 July 1955	"
MONICA H.	1	DAUGHTER	7 August 1956	"

FAMILY HISTORY

Father's Name McKinley (NM) GREEN Birthplace EL DORADO ARK. Occupation DOMESTIC SERV.
 Mother's Name LUCY B. Birthplace VICKSBURG, MISS. Occupation HOUSEWIFE
 No. of Sisters 1 No. of Brothers 3 If married, birthplace of Husband or Wife BOSTON, MASSACHUSETTS

EMPLOYMENT RECORD

Include all positions since leaving and during school in chronological order. Start with your present or most recent employment. Account fully for your unoccupied time. Be exact as to dates.

TIME EMPLOYED	EMPLOYER	ADDRESS	POSITION HELD OR TYPE OF DUTY	MO. SALARY (If Comm. Give Average Monthly Earnings)	WHY DID YOU LEAVE
From	To				
Mo. <u>MAR</u> Mo. <u>MAR</u> Yr. <u>50</u> Yr. <u>50</u>	<u>USAF</u>	<u>BASES IN TEX. LA. ONI.</u>	<u>OFFICER-PILOT</u>	<u>\$625.00</u>	<u>TO MAKE CAREER AS AIRLINE PILOT</u>
Mo. <u>FEB</u> Mo. <u>MAR</u> Yr. <u>48</u> Yr. <u>50</u>	<u>USAF</u>	<u>BASES IN TEXAS AND TERE OF HAWAII</u>	<u>AIRMAN</u>	<u>\$110.00</u>	<u>TO BECOME A.F. PILOT & OFFICER</u>
Mo. <u>JAN</u> Mo. <u>FEB</u> Yr. <u>48</u> Yr. <u>48</u>	<u>UNEMPLOYED</u>	<u>734 S. SMITH AVE</u>	<u>---</u>	<u>NONE</u>	<u>TO ENTER USAF</u>
Mo. <u>SEP</u> Mo. <u>JAN</u> Yr. <u>47</u> Yr. <u>48</u>	<u>IN SCHOOL</u>	<u>EPHRAIM APOSTOLIC COLL.</u>	<u>SEMINARIAN</u>	<u>NONE</u>	<u>DETERMINED LACK OF PRIESTLY VOCATION</u>
Mo. <u>JUN</u> Mo. <u>SEP</u> Yr. <u>47</u> Yr. <u>47</u>	<u>BOWLES CONSTR. CO.</u>	<u>DETROIT, MICH.</u>	<u>LABORER</u>	<u>\$240.00</u>	<u>TO ENTER SEMINARY</u>
Mo. <u>JUN</u> Mo. <u>JUN</u> Yr. <u>47</u> Yr. <u>47</u>	<u>UNEMPLOYED</u>	<u>734 S. SMITH</u>	<u>---</u>	<u>NONE</u>	<u>TO SEEK EMPLOYMENT</u>
Mo. <u>SEP</u> Mo. <u>MAY</u> Yr. <u>46</u> Yr. <u>47</u>	<u>IN SCHOOL</u>	<u>5116 LAMBOURG</u>	<u>H.S. STUDENT</u>	<u>NONE</u>	<u>SCHOOL TERMINATION</u>

EDUCATION

List below a complete record of schools attended:

SCHOOL	NAME OF SCHOOL	LOCATION	YEARS ATTENDED		GRADUATED		SPECIALIZATION (List Degree)
			From	To	Yes	No	
Elementary	FAIRVIEW GRAMMAR	EL DORADO, ARK.	1935	1942	✓		ACADEMIC
High	UNION HIGH	NEW ORLEANS, LA.	1942	1947		✓	
Service or Trade	XAVIER UNIV. PREP.	NEW ORLEANS, LA.	1946	1947	✓		
	USAF FLYING TRNG.	RAVENS FLYING, TEX. REES AFB, TEX.	1950	1951	✓		Aviation-Crew Officer
College	PASSED COLLEGE	GED TEST	1948	PASSED 2 CX			(Coll. Exam) 1952
University	EPHRAIM APOSTOLIC COLLEGE	NEW BURG, N.Y.	1947	1947		✓	Seminarian
Other	USAF Sq. OFFICER CREW	MAXWELL FIELD, ALA.	1952	1952	✓		Officer Training

If you attended a university or college and failed to obtain your degree, state why DETERMINED MY LACK OF PRIESTLY VOCATION PRIOR TO COMPLETION OF STUDIES.

What quarter of your class did you graduate? --- Check the college activities in which you were successful—Athletics ---

Collections --- Music --- Dramatics, etc. --- Honorary Societies --- Clean and Club Offices --- Others ---

Are you a member of any fraternities or clubs? NONE

If you received any college expenses, if any, did you earn? ALL

What hobbies do you have? PHOTOGRAPHY, BOOKS, READING, LISTENING TO RADIO RECORDINGS, DRIVING.

What languages do you speak and write? ENGL. STUDIED FRENCH FOR TWO YEARS IN H.S.

REFERENCES

Give the names and addresses of four persons you have known for five years or more and to whom you can refer as to your character and ability. Do not refer to any relative or an employee of the company.

Name	Address	City and State	Occupation
Mr. J. H. Fichter, C. T.	Notre Dame University	Indiana	Priest - Sociologist
Mr. Bernard G. G. G.	1863 Greenway South	Columbus, Ohio	CHA Tower Operator
Miss Helen McDaniel	414 Derper Road	"	Social Worker
Mr. Edward Kammerer	"	Sioux City, S. Dakota	Rancher - Teacher

RELATIVES IN COMPANY

Are you related to any officers, directors or employees of this company? No If so list below:
(Yes or No)

Name	Position	Relationship

IF YOU ARE QUALIFIED FOR ANY OF THE FOLLOWING POSITIONS, PLEASE ANSWER ANY OR ALL OF THE QUESTIONS

PILOT

(THE FOLLOWING FLYING TIMES MUST BE SUBSTANTIATED BY CERTIFIED LOG OR RECORD)

1364938

Pilot Certificate Private Grade COMM. Aircraft Equipment MULTI Ratings: Land YES - Water YES - MULTI

Instructors License or Ratings: _____

Total Hours 3071:30 Approx. Hours as: Student Pilot 1838:15 (1) First Pilot 778:45

Types of Airplanes Flown: C-45, 47-54, 97, B-25, -26, -29, SA-16, SH-19, T-6, -33

Rated on T-6 "Texan" Airplane, at (City) Wichita, Kan. Date 26 May 1950

What military airplane pilot rating do you hold? PILOT (NO STAR) Nature and Date of license waiver: UNKNOWN

What training have you had in: (1) Meteorology AF Flying School 7 yrs flying (2) Navigation? SAME AS METEOR.

(3) Radio SAME AS METEOR. (4) Aircraft Instruments? SAME AS METEOR.

NOTE: (Give place, date, type airplane, circumstances and penalties)

(1) Accidents you have had resulting in injury or death of passengers: NONE

(2) Penalties or other actions: NONE

RADIO

Radio License Class None No. None Date None Original License None Date None Class None Other Licenses Held None Receive on Typewriter None

State any other training or knowledge in radio USAF Flying School, B-29, SA-16, C-97 AND T-33
ENGINEERING (GROUND) SCHOOLS PLUS 7 YRS. PILOTING EXPERIENCE USING
VHF, HF, UHF, OMNI, IBS, AND ZR RECEIVERS.

MECHANICAL

State Amount of Aeronautical Experience (in years) None Line Maintenance None Overhaul None Manufacturing None

Other mechanical experience None

OFFICE

State amount of experience in following: Filing None Dictaphone None Machines None Other Business None

Accountant		Comptometer Oper.		Statistical Clerk	
Auditor		IBM Operator		Stock Clerk	
Billing Clerk		Pay Roll Clerk		Other	
Bookkeeper		Shipping Clerk			

REMARKS:

EXPECT TO RECEIVE COMM. PILOT LICENSE (PILOT LAND, SEA AND INSTRUMENT)
15 MAY 1957 WITH CAA CLASS 1 MEDICAL CERTIFICATE
JOSEPH COLLEGE LEVEL G.E.D., (2) ARMED FORCES 2 CX TEST (2YR COLL. EQUIV.) AND
AVIATION CADET 2YR COLLEGE EQUIV. TEST.
AT CAPTAIN AT TIME OF DISCHARGE - 8 MAY 1957.

INSTRUCTIONS TO EMPLOYING OFFICER

Employing officer or his clerk must see that applicant fills out one copy of form P-124 for each reference checked by interviewer. These to be attached to this application and promptly forwarded to Personnel Department, Denver, after applicant has been qualified by medical examiner and the portion below has been filled out.

Job Classification None Effective Date None

(EMPLOYING OFFICER MUST SIGN THIS APPLICATION)

I have personally reviewed this application and recommend employment if investigation of references prove satisfactory.

(Personal Signature of Employing Officer) None (Title) None (Date) None

Date None

[fol. 492]

(Letterhead of Holland & Hart, Denver 2, Colorado)

June 18, 1958

Mr. Edward Miller, Chairman
Colorado Anti-Discrimination Commission
University Building
Denver 2, Colorado

Re: Marlon D. Green vs. Continental Air Lines, Inc.

Dear Mr. Miller:

There are enclosed letters from the five pilot applicants reflecting their flying experience, as per our letter of May 13, 1958.

We regret the delay in submitting this information to the Commission but these pilots were widely scattered and it was difficult to trace some of them. The information contained herein has not, of course, been verified by Continental Air Lines but we have no reason to disbelieve its accuracy.

Very truly yours,

HOLLAND & HART

By /s/ WILLIAM C. McCLEARN
William C. McClearn

WCMcC:B
Enclosures

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[fol. 493]

(Western Union Telegram Form)

1958 JUN 13 AM 11 54

A LLJ217 36 8 EXTRA COLLECT=EASTPOINT GA
13 1250PME=

K C SORBY, EMPLOYMENT MANAGER=
CONTINENTAL AIR LINES INC DVR=

TOTAL MULTI ENGINE HOURS AS OF JULY 1957
— — — 934.0 TOTAL SINGLE ENGINE HOURS SAME
THE 300.0 TOTAL PILOT HOURS TO JULY 1957 —
1234.0— TOTAL FIRST PILOT 783.4=

MARK T STEARNS JR 2301 DRAPER DRIVE
PO-6-5766
COLLEGE PARK GA==

[fol. 494]

May 13, 1958

Mr. Sherl C. George
Co-Pilot
Dallas, Texas

Dear Mr. George:

We find ourselves in need of some additional information not available on your original application. We should appreciate your indicating below the number of hours of multi-engine and/or jet pilot time you had flown as of July 1, 1957.

Many thanks for your prompt handling of this request.

Yours very truly,

K. C. Sorby,
Manager, Employment and
Employee Relations

Total hours flown in multi-engine aircraft prior to July 1,
1957 897:23

Total jet time flown prior to July 1, 1957 None

Signature S. CLARK GEORGE

[fol. 495]

(Letterhead of Continental Air Lines, Denver 16, Colorado)

May 13, 1958

Mr. James B. Bryant

11713 E. 17th

Aurora, Colorado

Dear Jim:

We find ourselves in need of some additional information not available on your original application. We should appreciate your indicating below the number of hours of multi-engine and/or jet pilot time you had flown as of July 1, 1957.

Many thanks for your prompt handling of this request.

Yours very truly,

/s/ KEN C. SORBY

K. C. Sorby,

Manager, Employment and
Employee Relations

Total hours flown in multi-engine aircraft prior to July 1,
1957 5 hours

Total jet time flown prior to July 1, 1957 None

Signature J. B. BRYANT

[fol. 496]

(Letterhead of Continental Air Lines, Denver 16, Colorado)

May 13, 1958

Mr. Charles E. Dresser

1914 E. Willow St.

Anaheim, California

Dear Mr. Dresser:

We find ourselves in need of some additional information for some research we are doing. This information is not available on your original application. We should appre-

ciate your indicating below the number of hours of multi-engine and/or jet pilot time you had flown as of July 1, 1957.

Many thanks for your prompt handling of this request.

Yours very truly,

/s/ K. C. SORBY
K. C. Sorby,
Manager, Employment and
Employee Relations

Total hours flown in multi-engine aircraft prior to July 1, 1957. None

Total jet time flown prior to July 1, 1957 None

Signature CHAS. E. DRESSER

[fol. 497]

(Letterhead of Continental Air Lines, Denver 16, Colorado)

June 4, 1958

Mr. Howard F. Cole
6205 St. John Avenue
Minneapolis, Minn.

Dear Mr. Cole:

We find ourselves in need of some additional information for some research we are doing. This information is not available on your original application. We should appreciate your indicating below the number of hours of multi-engine and/or jet pilot time you had flown as of July 1, 1957.

Many thanks for your prompt attention to this request.

Yours very truly,

/s/ K. C. SORBY
K. C. Sorby,
Manager, Employment and
Employee Relations

Total hours flown in multi-engine aircraft prior to July 1, 1957 200

Total jet time flown prior to July 1, 1957 800

Signature HOWARD F. COLE

[fol. 498]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

No. 25

MARLON D. GREEN, Complainant,

VS.

CONTINENTAL AIR LINES, INC., Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

[fol. 506]

FINDINGS OF FACT

The Complainant alleges a violation of the Colorado Anti-Discrimination Act of 1957, basically in the allegation that the Respondent refused to employ the Complainant as a commercial air line pilot because he is a Negro. The Respondent denies that it has violated the Act. It questions the jurisdiction of this Commission and the constitutionality of the Act.

The Complainant is a resident of 608 North Logan, Lansing, Michigan and is presently engaged as the Department Pilot for the Michigan State Highway Department.

The Respondent is a duly authorized and certificated commercial carrier by air and maintains an office at Stapleton Airfield, Denver, Colorado.

Complainant filed application for employment as a pilot with the Respondent on April 30, 1957; the application contained a request for two photographs of head and shoulders not over 1½ x 2½ inches taken within the last 12 months and which application also had a space for racial identity.

At the time Complainant made application for employment with Respondent, he was a rated pilot so designated by the U. S. Air Force, as of 24 March 1951.

Complainant during his military career had flown the T-6 Trainer, the B-25, the B-29, the B-26, the 5A-16, the C-45 or Twin Beach, the C-97 and C-47.

[fol. 507] The Complainant as of June 26, 1957 had logged 3,071 hours flying time as evidenced by Air Force Form 5, on file with the Director of Flight Safety Research, Norton Air Force Base, California.

Complainant's rank when discharged from the Air Force was that of Captain.

Complainant arrived in Denver, June 24, 1957 for employment interview with Respondent.

Complainant was directed by Captain Cramp to the link trailer department for a check ride in the link trainer.

On the following day Complainant took a flight check with Captain Cramp and after the flight check, was advised that he could return to Lansing, expecting the reply from Respondent in about ten days.

Complainant was not selected for the July training class; Complainant's application was kept in a file of eligible checked out-pilots. He was still retained as an eligible candidate for pilot position. It was admitted that he was a good pilot and met Respondent's minimum qualifications.

Complainant's application was withdrawn from further consideration in the early part of August because Respondent was made aware of some publicity appearing in the Albuquerque Journal of August 4.

The Respondent is guilty of a discriminatory and unfair employment practice in requiring on its application form, the racial identity of the applicant and the requirement of a photo to be attached to the application, each of which is contrary to regulations adopted by this Commission under Section 4, sub-section 2 of Chapter 176, Session Laws of 1957, also known as the Colorado Anti-Discrimination Act of 1957.

[fol. 508] From the applications submitted to the Commission for review, we find:—

Applicant, Marlon D. Green with a total of 3,071:30 flying hours with multi-engine equipment.

Applicant No. 2 with a total of 1,150 flying hours.

Applicant No. 3 with a total of 1,000 flying hours in single engine equipment, mostly jet.

Applicant No. 4 with a total of 2,100:53 flying hours.

Applicant No. 5 with a total of 1200 flying hours, in multi-engine equipment.

Applicant No. 6 with a total of 1031 flying hours in single engine equipment.

Based on a review of the applications for employment of the several persons interviewed at the time Mr. Green was interviewed, it appears that Complainant had more flying hours than any other applicant and was better qualified for the position of co-pilot than any applicant interviewed, but was not hired because of the discriminatory act of Respondent.

In spite of the fact that the Respondent properly asserts that this position is an extremely important one, dealing with human lives as it does, the evidence does not show that the Respondent exercised extreme care in the selection of the applicants for the training school; on the contrary it was difficult, if not impossible to determine from the Respondent's testimony, although the witnesses were asked repeatedly, who was charged with the selection of the successful applicants. The evidence is conclusive on the basis of the [fol. 509] testimony that the only reason that the Complainant was not selected for the training school was because of his race.

CONCLUSIONS OF LAW

The Commission assumes constitutionality of the law.

The Commission has jurisdiction to hear the complaint.

The Commission finds that there is a violation as charged in the complaint.

ORDERS

The Complainant has requested this Commission to withdraw his complaint. Rule 2 (j) of the Rules of the Commission provides with respect to withdrawal as follows: " * * * if the request for withdrawal is made after the case has been noted for hearing the written consent of a majority of the hearing examiners shall be obtained." A majority of the hearing examiners have not consented to such withdrawal. Accordingly it is hereby ordered as follows:

The Respondent shall cease and desist from such discriminatory and unfair employment practice.

The Respondent shall give to the Complainant the first opportunity to enroll in its training school in its next course,

and the priority status of the Complainant shall be fixed as of June 24, 1957.

In view of Complainant's request that his complaint herein be withdrawn, he is directed to advise this Commission in writing on or before January 10, 1959 of his willingness to enter the next pilot training course to be conducted by Respondent. In the event of Complainant's failure so to do the Respondent will be released of the obligation [fol. 510] of the order entered herein to place him in such class. In the event Complainant elects within the time mentioned to enter such class, the Commission shall advise the Respondent of such election and thereupon such written advice to the Respondent shall be deemed the service of an order of the Commission pursuant to Section 6 of the Act, and Respondent shall be allowed thirty (30) days from the service of such order in which to file its statutory petition for review in the district court under the provisions of Section 7 of the Act.

The Commission retains jurisdiction of the matter under the provisions of the Act.

By Order of the Commission
Roy M. Chapman, Coordinator

[fol. 512]

BEFORE THE COLORADO ANTI-DISCRIMINATION COMMISSION

Complaint No. 25

[Title omitted]

NOTICE OF ELECTION TO ENROLL IN PILOT TRAINING CLASS

In the matter of the complaint above named and the Commission's orders issued and served upon the parties under date of December 19, 1958:

The Respondent above named is hereby notified that the Complainant above named has notified the Commission in writing under date of December 31, 1958, and in accordance with the provisions of said orders that he has elected to enroll in the Respondent's next pilot training class.

In Witness Whereof, These presents have been duly executed and served upon the Respondent this 7th day of January, 1959.

Colorado Anti-Discrimination Commission, 655
Broadway Building, Denver 3, Colorado, By Roy
M. Chapman, Coordinator.

[fol. 513]

IN THE DISTRICT COURT

IN AND FOR THE CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. B29648

[Stamp—Filed in District Court, City & County of Denver,
Colorado, Feb. 3, 1959]

CONTINENTAL AIR LINES, INC., Petitioner,

vs.

COLORADO ANTI-DISCRIMINATION COMMISSION, and EDWARD
MILLER, MRS. PAUL BUDIN, CLARENCE C. BELLINGER,
GENE MANZANARES, ROBERT C. KEELER, GEORGE J. WHITE,
and ROBERT O. CORY, Commissioners of said Commission,
and MARLON D. GREEN, Respondents.

COMPLAINT

PETITION FOR REVIEW PURSUANT TO
1953 CRS 80-24-8 (Supp.)

[Stamp—Filed in the Supreme Court of the State of Colo-
rado, Sep. 23, 1959, George A. Trout, Clerk]

Comes Now the above-named Petitioner by its attorneys
and for its Petition for Review and Complaint against
Respondents states and alleges as follows:

1. Petitioner, a duly certificated commercial carrier by
air, is a corporation qualified and doing business in the
State of Colorado. Petitioner maintains an office at Staple-
ton Airfield, Denver, Colorado.

2. Respondent Colorado Anti-Discrimination Commission (hereinafter referred to as "Commission") is an agency of the State of Colorado created and organized pursuant to the provisions of the Colorado Anti-Discrimination Act of 1957 (1953 CRS, c. 80, Art. 24 (Supp.)). Respondents Milier, Budin, Bellinger, Manzanares, Keeler, White, and Cory are the duly appointed and acting Commissioners of [fol. 514] said Commission. Respondent Green is an individual who filed a complaint against Petitioner with the Commission.

3. On or about August 13, 1957, Respondent Green filed a written complaint against Petitioner with the Commission. By order dated March 28, 1958, the Commission directed that a hearing be held on said complaint. Petitioner filed its answer to the complaint and a hearing was held by the Commission on May 7 and 8, 1958, in the offices of the Commission at 655 Broadway Building, Denver, Colorado. On December 19, 1958, the Commission issued its Findings of Fact, Conclusions of Law and Orders in the within matter and on January 7, 1959, the Commission issued its Notice and Final Order.

4. Petitioner alleges that it is aggrieved by the orders issued by the Commission and brings this action, pursuant to the provisions of 1953 CRS 80-24-8 (Supp.), to review the proceedings held and orders entered by the Commission in the within matter. Petitioner prays that the Commission be ordered to certify to this Court a transcript of the records and proceedings made and had in this matter, that the orders of the Commission be reviewed, and for the following relief:

First Claim for Relief

Petitioner moves the Court for an order directing the Commission to vacate and set aside the orders heretofore issued by the Commission against Petitioner and to dismiss the complaint filed against Petitioner by Respondent Green on the ground (1) that the Commission is without jurisdiction over the subject matter of this proceeding, and (2) [fol. 515] that the Commission has purported to act in excess of its jurisdiction in this proceeding.

Second Claim for Relief

1. Petitioner is engaged in the transportation of passengers and freight by air in and between the States of California, Colorado, Illinois, Kansas, Missouri, New Mexico, Oklahoma, and Texas by virtue of and subject to the laws, statutes and regulations of the United States applicable to interstate commercial carriers by air.

2. By such laws, statutes and regulations the United States has reserved to its exclusive jurisdiction the regulation and control of interstate commercial carriers by air pursuant to the provisions of Article I, §8, of the Constitution of the United States.

3. Flight crew personnel employed by Petitioner, including pilots, are essential to the conduct of its business in interstate commerce and the performance of their duties by such flight crew personnel necessarily takes place in all or several of the states in which Petitioner conducts its business. A substantial number of Petitioner's flight crew personnel are domiciled and perform all or the major part of their duties in states other than Colorado. By reason thereof the provisions of the Colorado Anti-Discrimination Act of 1957 purporting to regulate and control Petitioner in its operations as an interstate commercial carrier by air, including the regulation and control of the selection and qualification of Petitioner's flight crew personnel, are and constitute an undue burden on interstate commerce in violation of Article I, §8 of the Constitution of the United [fol. 516] States and are unconstitutional and void.

Wherefore, Petitioner moves the Court for an order vacating and setting aside the orders heretofore issued by the Commission and dismissing the complaint filed against Petitioner by Respondent Green, for its costs expended herein, and for such other or further relief as may to the Court seem proper.

Third Claim for Relief

1. The Commission erred by failing to grant Petitioner's Motion to Dismiss at the conclusion of Respondent Green's case-in-chief.

2. The Commission erred in making the following findings of fact in that said findings are not supported by substantial evidence and are contrary to the evidence and the law:

(a) That Petitioner requires the racial identity of an applicant for employment to be indicated on its employment application form.

(b) That a requirement for a photograph of an applicant to be attached to an employment application form is contrary to regulations adopted by the Commission or the Colorado Anti-Discrimination Act of 1957 in the absence of a finding that such requirement expresses or was intended to express a limitation, specification, or discrimination as to race, creed, color, national origin or ancestry, and in the absence of a further finding that such requirement was not based upon a bona fide occupational qualification.

[fol. 517] (c) That Respondent Green was better qualified for the position of co-pilot than any applicant interviewed.

(d) That Petitioner does not exercise extreme care in the selection of applicants for its pilots training school.

(e) That the only reason Respondent Green was not selected for Petitioner's pilot training school was because of his race.

3. The Commission erred in making the following conclusions of law in that said conclusions are not supported by substantial evidence and are contrary to the evidence and the law:

(a) By "assuming" the constitutionality of the Colorado Anti-Discrimination Act of 1957 as applied to Petitioner and the facts of this action and by asserting and purporting to exercise jurisdiction to hear and decide the complaint herein and to issue affirmative orders against Petitioner.

(b) By concluding that the violations charged in the complaint of Respondent Green were committed by Petitioner when in fact there was no substantial evidence to support a finding that any of the violations charged in said complaint have been committed by Petitioner, nor to support a conclusion that Petitioner had violated the Colorado Anti-Discrimination Act of 1957 as charged.

[fol. 518] 4. The Commission erred in receiving into evidence testimony by Roy M. Chapman and John I. Binkley as to statements made by agents of Petitioner during the course of meetings with said Chapman and Binkley, as agents of the Commission, to confer, conciliate and negotiate a settlement of the complaint of Respondent Green. Such conferences were held and statements made by Petitioner's agents in the belief and with the understanding that the same were confidential and privileged. The Colorado Anti Discrimination Act of 1957 is intended to and does provide that such testimony and statements are confidential and privileged. By reason thereof such testimony and statements were incompetent and inadmissible and the reception of such evidence materially prejudiced the substantial rights of Petitioner.

Wherefore, Petitioner moves the Court for an order vacating and setting aside the orders heretofore issued by the Commission and dismissing the complaint filed against Petitioner by Respondent Green, for its costs expended herein, and for such other or further relief as may to the Court seem proper.

Fourth Claim for Relief

1. While continuing to deny that it violated the Colorado Anti-Discrimination Act of 1957 as alleged in Respondent Green's complaint, Petitioner alleges that on or about December 14, 1958, it received a telegram from Respondent Green, a copy of which is attached hereto as Exhibit A.

2. By said telegram Respondent Green attempted to [fol. 519] and did withdraw the complaint he had previously

filed with the Commission against Petitioner. Upon the withdrawal of Respondent Green's complaint the Commission was without jurisdiction to proceed in the within matter.

3. Rule 2(j) of the Rules of Practice and Procedure adopted and published by the Commission purports to limit and condition the right of a complainant to withdraw his complaint by requiring the prior written consent of a majority of the hearing examiners to such withdrawal.

4. The order of the Commission herein recites that a majority of the hearing examiners did not consent to the withdrawal of Respondent Green's complaint.

5. Said Rule 2(j), insofar as it purports to limit the right of a complainant to withdraw his complaint, is inconsistent with and contrary to the purposes and aims of the Colorado Anti-Discrimination Act of 1957, is in excess of the powers and duties conferred upon the Commission by 1953 CRS 80-24-5(3) (Supp.), and constitutes an arbitrary and capricious abuse of discretion by the Commission and by reason thereof is void and unenforceable.

6. The refusal of the majority of the hearing examiners to consent to the withdrawal of Respondent Green's complaint is inconsistent with and contrary to the purposes and aims of the Colorado Anti-Discrimination Act of 1957, is in excess of the powers and duties conferred upon the hearing examiners by said Act, and constituted an arbitrary and capricious abuse of discretion by the hearing examiners, or such of them as refused to consent to the withdrawal of Respondent Green's complaint. By reason thereof such purported refusal to consent is null and void [fol. 520] and without legal effect.

Wherefore, Petitioner moves the Court for an order vacating and setting aside the orders heretofore issued by the Commission, for its costs expended herein, and for such other or further relief as may to the Court seem proper.

Fifth Claim for Relief

1. By order dated March 28, 1958, the Commission docketed the complaint of Respondent Green for hearing before the Commission sitting as hearing examiners.

2. Although 1953 CRS 80-24-4 (Supp.) provides that the Commission shall consist of seven members, only five of the designated hearing examiners were present for the hearing session conducted on the morning of May 7, 1958, only four of the designated hearing examiners were present for the hearing session on the afternoon of May 7, 1958, only three of the designated hearing examiners were present during almost all of the hearing session conducted on May 8, 1958, and only two of the designated hearing examiners were present during all of the taking of the testimony, arguments and hearing held on Respondent Green's complaint against Petitioner.

3. The failure of the designated hearing officers, or even a quorum thereof, to attend the said hearing, and the action of some of the hearing examiners in attending only portions of the hearing and hearing only parts of the testimony and arguments constituted an arbitrary and capricious abuse of the discretion by said hearing examiners and denied to Petitioner the due processes of law in violation of Article II §25 of the Constitution of the State of Colorado and Article XIV §1 of the Constitution of the United States.

[fol. 521] 4. While continuing to allege that the duly designated hearing examiners were acting in excess of their authority and without jurisdiction for the reasons set forth above, Petitioner further alleges upon information and belief that the duly designated hearing examiners, or such of them as had an opportunity to hear all of the testimony and observe all of the witnesses, failed and neglected to make and set forth their findings of fact and decisions to the Commission as required by Rule 11(a) of the Rules of Practice and Procedure adopted and published by the Commission.

5. The findings, conclusions and orders heretofore issued in this matter purport to have been made and entered

by the Commission as a whole. In the absence of findings and decisions as required by said Rule 11(a), it is impossible for this Court or Petitioner to determine which of the designated hearing examiners made findings of fact, evaluated the credibility of the witnesses and made recommendations to the Commission as a whole, or the basis upon which such findings, evaluations and recommendations were made, or whether in fact the designated hearing examiners, or any of them, did make findings, evaluations, or recommendations to the Commission as a whole.

6. The manner in which the hearing was conducted and the failure of the designated hearing examiners and the Commission to comply with the requirements of the Colorado Anti-Discrimination Act of 1957 and the Rules of Practice and Procedure of the Commission as aforesaid constituted an arbitrary and capricious abuse of discretion by the Commission and denied to Petitioner the due processes of law in violation of Article II §25 of the Constitution [fol. 522] of the State of Colorado and Article XIV §1 of the Constitution of the United States. By reason thereof the designated hearing examiners and the Commission were without jurisdiction to proceed and the findings, conclusions, and orders entered herein are void and without legal effect.

Wherefore, Petitioner moves the Court for an order vacating and setting aside the orders heretofore issued by the Commission and dismissing the complaint filed against Petitioner by Respondent Green, for its costs expended herein, and for such other or further relief as may to the Court seem proper.

Sixth Claim for Relief

Petitioner alleges that the findings of fact, conclusions of law and orders of the Commission are in numerous material respects so vague, ambiguous and uncertain that Petitioner is unable to comply therewith and by reason thereof said orders are void and unenforceable.

Wherefore, Petitioner moves the Court for an order vacating and setting aside the orders heretofore issued by

the Commission and dismissing the complaint filed against Petitioner by Respondent Green, for its costs expended herein, and for such other or further relief as may to the Court seem proper.

Holland & Hart, By Patrick M. Westfeldt, William C. McClearn, Warren L. Tomlinson, Attorneys for Petitioner, 520 Equitable Building, Denver 2, Colorado, AMherst 6, 1461.

Address of Petitioner: Stapleton Airfield, Denver, Colorado.

[fol. 523]

— EXHIBIT "A" TO COMPLAINT
(Western Union Telegram Form)

KA018 DEAO15
DE LLA103 PD=LGN LANSING MICH 14 259 AME=
CONTINENTAL AIRLINES
DENVER COLO=

1958 Dec 14 AM 2 15

URGENTLY REQUEST WITHDRAWAL OF MY COMPLAINT AGAINST CONTINENTAL AIRLINE=
MARLON D GREEN=

[Handwritten notation]
Phoned to Bell
at 8:20 AM 12/15 ORH

[Handwritten notation]

CC: R. F. SIX

H. LAWRENCE

P. KRIETHE

H. W. BELL—original

B. McCLEAREN—Holland & Hart

MARK KRAMER

(Western Union Telegram Form)

CCDHCC

DENVER COLO DEC 14 1958
CONTINENTAL AIRLINES
DVR FHK

REGARDING WIRE THIS MORNING FROM LANSING
MICH SIGNED MARLON GREEN—PLEASE COR-
RECT THE TEXT TO READ "FOLLOWING MESSAGE
SENT TO COLORADO ANTI DISCRIMINATION COM-
MISSION 6 BROADWAY BLDG QUOTE URGENTLY
REQUEST WITHDRAWAL OF MY COMPLAINT
AGAINST CONTINENTAL AIRLINES"

WESTERN UNION SERVICE DEPT

[fol. 524] [File endorsement omitted]

Clerk's certificate (omitted in printing).

IN THE DISTRICT COURT

IN AND FOR THE CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. B-29648

CONTINENTAL AIR LINES, INC., Petitioner,

vs.

COLORADO ANTI-DISCRIMINATION COMMISSION, and EDWARD
MILLER, MRS. PAUL BUDIN, CLARENCE C. BELLINGER, GENE
MANZANARES, ROBERT C. KEELER, GEORGE J. WHITE, and
GEORGE O. CORY, Commissioners of said Commission, and
MARLON D. GREEN, Respondents.

ANSWER AND PETITION FOR ORDER ENFORCING ORDER OF THE
COLORADO ANTI-DISCRIMINATION COMMISSION—Filed March
31, 1959

Come Now the Respondents herein, save and except Re-
spondent Marlon D. Green, by their attorneys, Duke W.
Dunbar, Attorney General of the State of Colorado, Charles
Thomas, Assistant Attorney General, and Robert L. Nagel,

Assistant Attorney General, and by way of answer to Petitioner's Complaint and Petition for Review, admit, deny, and allege as follows:

1. Admit the allegations of paragraph numbered 1.
2. Admit the allegations of paragraph numbered 2, except that Respondents deny that Respondent Bellinger is now a member of Respondent Commission, and on the contrary, Respondents allege that the said Respondent Bellinger has resigned as a member of such Commission, and as of this date, such vacancy has not been filled by appointment.
3. Admit the allegations of paragraph numbered 3.
4. Deny the allegations of paragraph numbered 4, except that Respondents admit that this is a proceeding pursuant to the provisions of 80-24-8, C.R.S., 1953, and Respondents affirmatively allege that they have certified to this Court a copy of the transcript of the records and proceedings made and had in this matter before Respondent Commission.

[fol. 525]

For Answer to Petitioner's First Claim for Relief

Respondents deny the allegations and conclusions of Petitioner's First Claim for Relief.

For Answer to Petitioner's Second Claim for Relief

1. Admit the allegations of paragraph numbered 1 of Petitioner's Second Claim for Relief, except that if by such allegations Petitioner intends to allege that its activities and business as an interstate commercial carrier by air are subject solely to the laws, statutes, and regulations of the United States, Respondents deny such allegations. Respondents affirmatively allege that Petitioner's home base and principal place of operation is located in Denver, Colorado.

2. Deny the allegations of paragraph numbered 2 of Petitioner's Second Claim for Relief, and on the contrary, affirmatively allege that the United States has not reserved

to itself exclusive jurisdiction or exclusive regulation and control over all phases of operation of interstate commercial carriers by air; that the United States has not legislated in the field or regulated discriminatory racial practices in employment of interstate commercial carriers by air, either directly or by implication; that the United States has not entered, or preempted, the field of regulation of discriminatory racial practices in employment by interstate commercial carriers by air; and that Petitioner has not shown that enforcement of the Colorado Anti-Discrimination Act of 1957 (80-24-1 C.R.S., 1953, *et seq.*) by Respondents, as against Petitioner, will substantially interfere with the free flow of commerce between the several states, or place an undue burden upon interstate commerce, contrary to the provisions of Article I, Section 8, of the Constitution of the United States.

3. Respondents admit that flight crew personnel employed by Petitioner, including pilots, are essential to the conduct of Petitioner's business, but deny the other allegations and conclusions contained in paragraph numbered 3 of Petitioner's Second Claim for Relief, and on the contrary, affirmatively allege: that such other allegations are not supported by testimony or evidence in the record; that the Order entered by Respondents herein relates solely to [fol. 526] acts of Petitioner occurring totally within the State of Colorado, and does not attempt or purport to effect, control, or regulate the hiring practices of Petitioner which take place elsewhere, or the duties performed by Petitioner's employees elsewhere; that there is no evidence in the record that Petitioner does, in fact, engage in hiring employees elsewhere than in the State of Colorado; that even if Petitioner does hire employees elsewhere, as well as in Colorado, Petitioner has introduced no evidence showing that enforcement of the Colorado Anti-Discrimination Act of 1957 against it would result in any interference with the free flow of commerce, or would place any burden upon interstate commerce, nor has any evidence been introduced as to how, or in what manner, such enforcement would result in a substantial interference with the free flow of commerce, or in placing an undue burden upon interstate commerce.

For Answer to Petitioner's Third Claim for Relief

1. Deny the allegations and conclusions contained in paragraph numbered 1.
2. Deny the allegations of paragraph numbered 2, and on the contrary allege:

A. That there is substantial and competent evidence in the record from which the Commission could, and did, find that Petitioner requires the racial identity of an applicant for employment to be indicated on its employment applications, in that there was evidence before the Commission that: the application form provided Respondent Green contained space for designation of race; the word "negro" was placed upon the application form submitted by Respondent; and all application forms used by Petitioner require the insertion of a photograph of the applicant.

B. That the evidence before the Commission indicates that Respondent Green had more pilot experience of the type and nature sought by Petitioner than did the applicants who were actually chosen by Petitioner for pilot training; that Respondent Green satisfactorily passed all tests submitted to him by Petitioner; and that Petitioner [fol. 527] was satisfied with the personality, character, and appearance of Respondent Green.

3. Deny the allegations and conclusions of paragraph numbered 3 of Petitioner's Third Claim for Relief.
4. Deny the allegations of paragraph numbered 4 of Petitioner's Third Claim for Relief.

For Answer to Petitioner's Fourth Claim for Relief

1. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegation that Petitioner received a telegram from Respondent Green in the form of a copy which is attached to Petitioner's Complaint and marked Exhibit A.

2. Admit that on or about December 14, 1958, and after the hearing by the Respondent Commission upon his Complaint, Respondent Green sent a telegram to the Commis-

sion, in which he attempted to withdraw a Complaint he had previously filed with the Respondent Commission against Petitioner, but deny the other allegations of paragraph numbered 2 of Petitioner's Fourth Claim for Relief.

3. Admit the allegations of paragraphs numbered 3 and 4 of Petitioner's Fourth Claim for Relief.

4. Deny the allegations of paragraphs numbered 5 and 6 of Petitioner's Fourth Claim for Relief.

For Answer to Petitioner's Fifth Claim for Relief

1. Admit the allegations of paragraph numbered 1 of Petitioner's Fifth Claim for Relief.

2. That with respect to the allegations contained in paragraph numbered 2 of Petitioner's Fifth Claim for Relief, Respondents admit that not all of the Commissioners of the Respondent Commission sat at all times during the hearing on the Complaint of Respondent Green, but deny the other allegations therein.

3. Deny the allegations and conclusions of paragraphs numbered 3, 4, 5, and 6 of Petitioner's Fifth Claim for Relief, and by way of further answer to Petitioner's Fifth Claim for Relief, Respondents affirmatively allege as follows:

[fol. 528] A. That Petitioner is estopped from objecting at this time to the number of Commissioners sitting at the hearing, and has waived any right which it may have had to object thereto had timely objection been made by failing to raise and pursue such objection at the time of the hearing before the Commission.

B. That pursuant to the provisions of 80-24-1 (6) C.R.S., 1953, a hearing may be held before any one or more Commissioners, and the presence of all Commissioners, or a quorum, is not required by the statute.

C. That the statute requires that all testimony and evidence adduced at the hearing be transcribed; that all testimony and evidence taken at the hearing herein was, in fact,

transcribed; and that such transcript was available to and before all members of the Commission at the time of the entry of its findings of fact, conclusions of law, and Order.

For Answer to Petitioner's Sixth Claim for Relief

Respondents deny the allegations and conclusions of Petitioner's Sixth Claim for Relief.

For Further Answer to Petitioner's Complaint

Respondents deny each and every other allegation of Petitioner's Complaint and Petition for Review not specifically and expressly admitted herein.

Wherefore, Respondents, having fully answered Petitioner's Complaint and Petition for Review, pray for judgment in favor of Respondents and against Petitioner; for an Order affirming the Decision and Orders of Respondents; for an Order dismissing Petitioner's Complaint and Petition for Review, and for such other and further relief as to the Court may seem proper.

Counterclaim

(Petition for Order Enforcing Order of the Colorado Anti-Discrimination Commission)

Come Now the above-named Respondents, by their attorneys, and by way of counterclaim and petition state and allege as follows:

1. That on or about August 13, 1957, Respondent Marlon [fol. 529] D. Green filed a written Complaint against Petitioner with the Respondent Commission, wherein he alleged, in part, that Petitioner had violated the Colorado Anti-Discrimination Act of 1957 (80-24-1 C.R.S., 1953, *et seq.*), and that Petitioner had refused to employ him as a commercial airline pilot because he is a negro.

2. That thereafter Petitioner filed its written Answer to the said Complaint of Respondent Green, and pursuant to the Order of the said Respondent Commission, a hearing was had before the Respondent Commission, with respect to the allegations of such Complaint.

3. That after the conclusion of such hearing, the Respondent Commission entered its findings of fact, conclusions of law, and Orders, (a copy of which is contained in the return of Respondent Commission in this action), in which the Commission found that Petitioner had refused to employ Respondent Green as a commercial airline pilot, and had refused to do so because Respondent Green is a negro.

4. That as a result of such findings, the Respondent Commission determined that Petitioner had violated the Colorado Anti-Discrimination Act of 1957, and ordered as follows:

"The Respondent shall cease and desist from such discriminatory and unfair employment practice.

"The Respondent shall give to the Complainant the first opportunity to enroll in its training school in its next course, and the priority status of the Complainant shall be fixed as of June 24, 1957.

"In view of Complainant's request that his complaint herein be withdrawn, he is directed to advise this Commission in writing on or before January 10, 1959 of his willingness to enter the next pilot training course to be conducted by Respondent. In the event of Complainant's failure so to do the Respondent will be released of the obligation of the order entered herein to place him in such class. In the event Complainant elects within the time mentioned to enter such class, the Commission shall advise the Respondent of such election and thereupon such written advice to the Respondent shall be deemed the service of an order of the Commission pursuant to Section 6 of the Act, and Respondent shall be allowed thirty (30) days from the service of such order in which to file its statutory petition for review in the district court under the provisions of Section 7 of the Act.

[fol. 530] "The Commission retains jurisdiction of the matter under the provision of the Act."

5. That in pursuance of such Order, Respondent Green advised the Commission by letter dated December 31, 1958,

of his willingness to enter the next pilot training course to be conducted by Petitioner, and that on or about January 7, 1959, notice of the election by Respondent Green to enroll in Petitioner's next pilot training course was served upon Petitioner.

6. That as of this date, Petitioner has not enrolled, or offered to enroll, Respondent Green in any pilot training course.

7. That upon information and belief, Respondents believe, and therefore allege, that unless ordered to do so by this Court, Petitioner will refuse to enroll Respondent Green in its next pilot training course, contrary to the Order of these Respondents.

8. That Petitioner has now commenced this action in this Court, seeking a review of the Orders made and entered by Respondent Commission, and as a result of such proceeding, considerable time may elapse before the validity of the Orders of Respondent Commission has finally been determined by this Court, or by any subsequent reviewing Courts.

9. That upon information and belief Respondents believe, and therefore allege, that Petitioner may employ additional pilots, or accept other persons for training as pilots, during the period of time necessary to conclude the review proceedings commenced by Petitioner—all to the detriment of the rights and interests of Respondent Green.

10. That as a result of the commencement of Petitioner's review proceedings, and the resultant delay in the enforcement of the Orders of Respondent Commission, and in order to protect the rights and interests of Respondent Green, and to more fully carry out and effectuate the intent of the Orders entered by the Respondent Commission, it is necessary that the Court enter a temporary or supplementary Order, requiring Petitioner to file periodic reports with the Respondent Commission, setting forth whether or not it has hired additional pilots or accepted [fol. 531] additional persons for training as pilots, the qualifications of any such persons so hired or accepted, and the date of such hiring or acceptance, together with the compensation being paid such persons.

Wherefore, Respondents pray as follows:

1. For an Order of this Court, pursuant to the provisions of 80-24-8 (1) and 80-24-8 (3), C.R.S., 1953, enforcing the Order of the Colorado Anti-Discrimination Commission above described.

2. For an Order of this Court, directing and requiring Petitioner to enroll Respondent Marlon D. Green in its next pilot training course.

3. For such other and further relief as this Court may deem necessary to secure compliance with, and enforcement of, the Orders of the Colorado Anti-Discrimination Commission and this Court, including, but not by way of limitation, relief by way of injunction or temporary orders.

4. For a Supplementary Order requiring Petitioner to file written reports with the Respondent Commission, and with this Court, on or before such day as may be fixed by this Court, covering the period from and after June 24, 1957, and to thereafter file quarterly reports until further Order of this Court, containing the following information:

A. Whether Petitioner has employed any additional pilots or accepted any additional pilots for pilot training.

B. The names and addresses of any such persons and their qualifications as pilots upon which they were so selected.

C. The date of employment or acceptance for pilot training.

D. The compensation being paid such persons.

5. For costs, and for such other and further relief as to the Court may seem proper.

Duke W. Dunbar, Attorney General, State of Colorado; Charles S. Thomas, Assistant Attorney General; Robert L. Nagel, Assistant Attorney General; Attorneys for Respondents, Colorado Anti-Discrimination Commission, and Commissioners thereof.

Address of Respondents: State Capitol Building, Denver 2, Colorado.

[fol. 532]

[File endorsement omitted]

IN THE DISTRICT COURT

IN AND FOR THE CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. B-29648

CONTINENTAL AIR LINES, INC., Petitioner,

vs.

COLORADO ANTI-DISCRIMINATION COMMISSION and the COMMISSIONERS of said COMMISSION, and MARLON D. GREEN, Respondents.

ANSWER OF MARLON D. GREEN—Filed March 31, 1959

Comes now the respondent Marlon D. Green, by his attorney T. Raber Taylor, and in answer to the Petition for Review filed by Continental Air Lines, Inc., asks the Court with deliberate speed to enter an order and decree enforcing the orders of the Commission and in the alternative, if the proceedings be remanded to the Commission that the Commission be directed to enter a back pay award for training for the period beginning June 24, 1957.

Respondent directs the attention of the Court to the discouraging delay. Like many other U. S. Air Force pilot officers, respondent sought employment as a commercial air line pilot. While still stationed with the Air Force in Japan with the rank of Captain, he sent letters of application to most of the major air lines in the United States. Later when he was discharged and returned to the United States he made applications personally, by mail, and by telephone. About April 20, 1957, on his return from Japan he secured an employment application form from the Continental Air Lines, Inc. office in San Francisco and sent it to the Denver office for consideration for pilot employment. (Tr. p. 48) For four months he diligently sought employment as a commercial pilot. At the end of this time he accepted employment with the Michigan Highway Department.

[fol. 533] In answer to the first four numbered paragraphs of the petitioner's Petition for Review, respondent states:

1. The facts stated in paragraph 1 are admitted.
2. The facts stated in paragraph 2 are admitted.
3. The facts stated in paragraph 3 are admitted.
4. The allegation stated in paragraph 4 that petitioner is aggrieved by the orders issued by the Commission is denied. The remaining matters are admitted.

I. The Commission has Jurisdiction

a. The Commission has jurisdiction over the subject matter of this proceeding.

b. The Commission in this proceeding acted within the grant of its jurisdiction although it did not exercise the plenitude of its authority.

II. The Record and Proceedings Present No Facts Indicating a Burden on Interstate Commerce

In answer to petitioner's Second Claim for Relief, respondent states:

a. The facts alleged in paragraphs 1, 2, and 3 in so far as they are supported by evidence in the record, are admitted. Allegations of fact not supported by the evidence in the record, conclusions of law and interpretation of laws, statutes and regulations are denied.

b. There is no evidence in the record that the prohibition against discrimination in hiring on account of race or color constitutes a burden on interstate commerce.

c. In answer to paragraph 2 it is stated that officials of the United States of America have studied racial discrimination in private industries that engage in interstate commerce and bills have been introduced in the Congress of the United States to prohibit racial discrimination in such industries. Nevertheless as of June 24, 1957, no law or regulation of the United States or any of its agencies ex-

pressly prohibited racial discrimination against prospective employees of interstate commercial carriers by air.

[fol. 534] d. The respondent had about 800 employees in Denver, Colorado; and about 95 of its 220 pilots were based in Denver, Colorado (Tr. p. 162).

e. The Congress of the United States when it passed the Enabling Act for the People of Colorado to form a Constitution and a State Government and to admit the State to the Union required that the Constitution of the State of Colorado "be republican in form, and make no distinction in civil or political rights on account of race or color, and not be repugnant to the Constitution of the United States and the principles of the declaration of independence * * * ." The Constitution of the State of Colorado, adopted March 14, 1876, in its Bill of Rights, Article II, affirmatively and expressly incorporated certain principles of the Declaration of Independence. The Declaration proclaims, "We hold these truths to be self-evident:— that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." Sec. 3 of Article II of the Colorado Bill of Rights declares: "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."— Equal opportunity for all is insured, in part, by Section 26 prohibiting slavery and Section 27 giving alien residents the right to acquire, and dispose of property as native born citizens. Further the Constitution of the State of Colorado to abolish in one area the "distinction in civil or political rights on account of race or color" expressly prohibited in any public educational institution "any distinction or classification of pupils * * * on account of race or color. (Art. IX, Section 8)."

f. In fulfillment of the mandate from the Congress of the United States that the State of Colorado "make no distinction in civil or political rights on account of race or color" and to insure to all citizens of the United States,

seeking work in the State of Colorado, the civil right to engage in the common occupations of life, the Colorado Anti-Discrimination Act of 1957 was passed.

[fol. 535] To implement the requirements of the Enabling Act and to avoid any repugnance with the Constitution of the United States, the State of Colorado enacted the Colorado Anti-Discrimination Act of 1957 to insure equal protection of the laws for each person seeking to engage in the common occupations of life.

III. The Finding of Fact, Conclusions of Law and Orders of the Commission are Supported by the Evidence and the Law.

In answer to petitioner's Third Claim for Relief respondent states the Findings of Fact, Conclusions of Law and Orders of the Commission are supported by substantial evidence and the law. Respondent denies each and every allegation of paragraphs 1, 2, 3, and 4 except as hereinafter specifically and expressly admitted.

Substantial evidence supporting the Findings of Fact are:

a. The 28 May 1957 Application for Employment—Continental Air Lines of Stearns, Mark Thornton, as well as the one of 27 April 1957 of respondent Green required the racial identity of the applicant for appointment. (Tr. N.) Respondent Green's application showed he was then in the United States Air Force and expected to be discharged about 1 May 1957. Stearn's application showed he was in the Navy Air Force.

b. All applications submitted to the Commission required a photograph of the applicant, but no photograph was attached to any application submitted to the Commission. Although the testimony might support such a requirement for a hostess applicant, (Tr. p. 158) it shows no support for such a requirement of office personnel, reservations personnel, (Tr. p. 159) or those not "primarily facing the public." (Tr. p. 157)

c. The Employment Policy from the General Policy Manual Continental Air Lines, Inc. (Complainant's Exhibit 9) states in part:

"A. Employment Policy

Applicants for employment will be considered solely on the basis of fitness and ability for the work as determined by such factors as character, skill, intelligence, and physical qualifications.

[fol. 536] *C. Responsibility for Selection*

The Department Head or his designated representative will select from the applicants referred to him by the Employment Manager the individual best suited for the position."

Harold W. Bell, Jr. Vice President, Personnel, Continental Air Lines Inc., described a man qualified to be employed by his air line as a pilot as one "able to fly, fly well, fly safely, and be a good member of the employee group." (Tr. p. 175A).

At the time Kenneth C. Sorby, Personnel Director of Continental Air Lines Inc. wired respondent Green in New York to come to Denver for his interview and arranged free air transportation, Continental Air Lines Inc. did not know he was a negro. (Tr. p. 169, 220 and 50). About June 24, 1957, respondent Green and Bryant were tested in Denver for the job as pilot. Six pilots, including respondent Green and Mr. Bryant were found qualified. (Tr. p. 185, 186). Mr. Bell, Continental Air Line's Vice President, described Mr. Green as "a good person and a very pleasant chap. He conducted himself very well with us." (Tr. p. 168). Four of the six found to be qualified were ordered to report for the July 10, 1957 class. Mr. Bryant was ordered to report for the September class. (Tr. p. 178, 190). Bryant's qualifications as stated by Mr. Bell, compared equally favorably with Mr. Green's (Tr. p. 186). Mr. Bell also said that respondent Green's qualifications "were satisfactory." (Tr. p. 169, 170).

The Flight Time Qualification required of all pilots, according to the latest printed application form, (respondent's #2) is: "Minimum 2,000 hours (flight time must be substantiated by certified log or record.)"

Mr. Bell testified that the company's minimum requirements for a man to be accepted as a candidate for pilot training included 2,000 flight hours "with as much multi-engine as we can get." (Tr. p. 232). The multi-engine experience must be "over 100 hours" (Tr. p. 232).

Continental Air Lines Inc. had no objection to making the records of the six qualified applicants available to the Commission for its deliberation and to evaluate the six according to qualifications. (Tr. p. 235). The records were volunteered to be supplementary exhibits. (Tr. p. 236).

[fol. 537] Bryant's flight time was 1160 hours with only 5 hours multi-engine. One of the four had no multi-engine experience and only 1031 hours flying time. (Tr. M.)

Marlon D. Green had a total of 3,071:30 flying hours with multi-engine equipment.

Mr. Kenneth C. Sorby, Manager, Employment and Employee Relations, Continental Air Lines Inc., testified that it was his personal job (Tr. p. 225) to interview applicants, but only met Mr. Green at the airport cafeteria (Tr. p. 226). Applicants are usually interviewed in the Personnel Office 3½ miles from the airport. (Tr. p. 226 and 145.)

Of Mr. Green he said, "All you have to do, I think, is shake hands with this fellow and you realize you have a pretty good boy. He is very friendly. I have been impressed with him right along." (Tr. p. 230).

Mr. Bell as Vice President of Personnel, was responsible for collective bargaining (Tr. p. 165). He expressed his high regard for the Air Line Pilots Association and his opinion that this pilot's union "will be perfectly fair in this matter" of the colored pilot. (Tr. p. 163-165).

d. When questioned how the five out of the six qualified pilots were selected and yet Mr. Green was not selected, Mr. Bell (Tr. p. 207) said he didn't know exactly who made the decision. Mr. Sorby denied he made it. Mr. Bell then described the selection method as "quite informal"- "haphazard" (Tr. p. 207-212).

e. About July 8, 1957 H. W. Bell Jr. telegraphed to Marlon D. Green—"Regret you were not selected for next Co-pilot class." (Complainant's #7). Mr. Bell testified that, as the result of a newspaper story in the Albuquerque

Journal of August 4th (Tr. p. 154) Mr. Green's name was withdrawn from the eligibility file solely because of the publicity. (Tr. p. 187-188). Mr. Bell instructed Mr. Sorby, the Employment Manager, to eliminate Mr. Green's application (Tr. p. 224, 225).

There is no evidence that the newspaper story was on the front page. Mr. Bell, nonetheless, stated that Continental Air Lines Inc. had the feeling that a pilot because of his unique position should not be involved in public controversy. (Tr. p. 154).—Continental Air Lines Inc. was not [fol. 538] interested in pilots "who make the front page." (Tr. p. 155)—even though the pilot was conscientiously or rightly asserting his rights in any type of lawsuit that got publicity. (Tr. p. 190).

Further, some additional substantial evidence was suppressed by the objection (Tr. p. 94) of Continental Air Lines Inc. to the testimony of Roy M. Chapman and John I. Binkley relating to the attempted conciliation and negotiation after December 23, 1957, (Tr. p. 87 to 96). This excluded competent and material evidence contrary to the provisions of the Colorado Anti-Discrimination Act of 1957. It also deprived respondent Green of due process of law in violation of Article II, Sections 6 and 25 of the Colorado Constitution and the XIV Amendment of the Constitution of the United States.

Wherefore, if there is any lack of support in the evidence, respondent Green moves that the Commission's ruling on the objection be reversed and the proceedings be remanded to take all the evidence of Roy M. Chapman, John I. Binkley, Harold W. Bell, Jr. and Kenneth C. Sorby and to enter an order directing back pay.

3. The Commission's Conclusions of Law are not only supported by substantial evidence but are also in accord with the evidence and the law. However, the only error of law of the Commission was its depriving the respondent Green of due process of law, as set out above, when it excluded certain competent and material testimony of Roy M. Chapman, John I. Binkley, Harold W. Bell Jr., and Kenneth C. Sorby.

Wherefore, respondent Green moves the Court for an order and decree enforcing the Orders of the Commission, or in the alternative, if the Court finds the evidence insufficient then to remand the proceedings to the Commission with instructions to take additional evidence from Roy M. Chapman, John I. Binkley, Harold W. Bell Jr., and Kenneth C. Sorby and others relating to the excluded evidence.

IV. MARLON D. GREEN WANTS TO BE EMPLOYED BY CONTINENTAL AIR LINES INC.

1. Marlon D. Green has revoked, and hereby revokes, his request to withdraw his complaint and has given the Commission written notice of his desire to enter the pilot training course to be conducted by respondent. He wants employment with petitioner.

[fol. 539] V. The Hearing was held at all times before the Chairman and at Least one Commissioner as Hearing Examiners.

In answer to petitioner's Fifth Claim for Relief it is admitted that by the Order dated March 28, 1958, the Commission docketed the complaint of respondent Green for hearing before the Commission sitting as hearing examiners.

Nevertheless no objection was made by petitioner, and it proceeded with the hearing when only five of the seven Commission members were present. It did not object when one Commissioner was absent on the afternoon of May 7, 1958 (Tr. p. 59). At the close of the day on May 7, when Commissioner Manzanares asked to be excused to serve as a pallbearer the next day, petitioner's counsel made no objection and indicated acquiescence. (Tr. p. 134-136). No objection was made at the opening of the proceedings on the morning of May 8, 1958 (Tr. p. 140 to 142) although motions on other matters were made and a continuance until other members were present could have been made. Objections not raised before the Commission can not be raised before this court. (Subsection (3) Section 7, Ch. 176, SL. 1957.)

The Chairman of the Commission and at least one other Commissioner were present during the taking of all the testimony, arguments and hearing.

Section 4 (5) of the statute specifically states that hearings may be held "by any Commissioner * * * or by any hearing examiner appointed by the Commission."

VI. The Findings of Fact, Conclusions of Law and Orders of the Commission are Understandable and Certain.

In answer to the Sixth Claim of Petitioner for Relief, respondent states that the Findings of Fact, Conclusions of Law and Orders of the Commission are understandable and certain.

However, in the alternative, if the proceeding is remanded to the Commission to take additional evidence, the Commission's Order should be amended to require not only hiring but also back pay to effectuate the purposes of the Act.

Address of Respondent, 608 North Logan Street, Lansing, Michigan.

[fol. 540] T. Raber Taylor, Attorney for Respondent,
Marlon D. Green, 405-818 Seventeenth Street, Denver 2, Colorado, ALpine 5-2051.

CERTIFICATE OF SERVICE

I certify that I have served the above Answer upon the petitioner, Continental Air Lines Inc. and the other respondents by placing true copies thereof in separate envelopes postage prepaid, in the United States mail at Denver, Colorado, addressed to their respective attorneys, namely, Holland & Hart, Equitable Building, Denver 2, Colorado, and Duke W. Dunbar, Attorney General, State Capitol Building, Denver 2, Colorado, on the 30th day of March 1959.

T. Raber Taylor.

[fol. 541]

[File endorsement omitted]

IN THE DISTRICT COURT

IN AND FOR THE CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. B-29648

CONTINENTAL AIR LINES, INC., Petitioner,

v.

COLORADO ANTI-DISCRIMINATION COMMISSION and EDWARD MILLER, MRS. PAUL BUDIN, CLARENCE C. BELLINGER, GENE MANZANARES, ROBERT C. KEELER, GEORGE J. WHITE, and GEORGE O. CORY, Commissioners of said Commission, and MARLON D. GREEN, Respondents.

REPLY—Filed April 30, 1959

Comes Now the above-named Petitioner by its attorneys and for its Reply to the Counterclaim of the above-named Respondents (save and except Respondent Marlon D. Green) states and shows the Court as follows:

First Defense

Petitioner moves the Court to dismiss the Counterclaim for failure to state a claim upon which relief may be granted against Petitioner.

Second Defense

1. Petitioner admits the allegations contained in ¶¶1, 2, 3, and 4 of the Counterclaim.

2. Petitioner admits that on or about January 7, 1959, notice of the election by Respondent Green to enroll in Petitioner's next pilot training course was served upon Petitioner, as alleged in ¶5. Petitioner denies each and [fol. 542] every other allegation contained in said ¶5 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3. Petitioner admits the allegations contained in ¶6 of the Counterclaim.

4. Petitioner denies the allegations contained in ¶7 of the Counterclaim and, on the contrary, alleges that these proceedings were commenced by Petitioner to review and set aside the Orders heretofore entered by Respondent Commission.

5. Petitioner admits that it has commenced this action in this Court seeking a review of the Orders made and entered by Respondent Commission as alleged in ¶8 of the Counterclaim. Petitioner denies each and every other allegation contained in said ¶8.

6. In answer to ¶9 of the Counterclaim, Petitioner states that it may or may not employ additional pilots or accept other persons for training as pilots depending upon a number of business factors wholly unrelated to the issues in this proceeding, including such factors as the fluctuation in demand for air service over Petitioner's routes, the granting of pending route applications and the sale of existing aircraft or the acquisition of additional aircraft. Petitioner denies the allegation that such action, if taken, would be detrimental to the rights of Respondent Green.

7. Petitioner denies the allegations and conclusions set forth in ¶10 of the Counterclaim.

Wherefore, Petitioner having fully replied to the Counter [fols. 543-546] claim, renews its prayer for relief as set forth in its Complaint and Petition for Review herein.

Holland & Hart, By Patrick M. Westfeldt, William C. McClearn, Warren L. Tomlinson, Attorneys for Petitioner, 520 Equitable Building, Denver 2, Colorado, AMherst 6.1461

[fol. 550] [File endorsement omitted]

IN THE DISTRICT COURT

IN AND FOR THE CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. B-29648

[Title omitted]

STIPULATION—Filed October 25, 1960

It is hereby stipulated and agreed by and between the parties hereto that during the period of time material to this action:

(a) Continental Air Lines, Inc. (hereinafter called "Continental") was engaged in business as a commercial carrier by air of passengers, freight, and United States mail pursuant to a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board. Continental is qualified to do business in the state of Colorado where its principal offices are located.

(b) Continental conducted its business in and between the states of Colorado, New Mexico, Texas, Oklahoma, Kansas, Missouri, Illinois and California. By reason thereof Continental was engaged in interstate commerce among said states.

[fol. 551] (c) If the record herein were remanded to the Colorado Anti-Discrimination Commission, said Commission would find and conclude that Continental was engaged in interstate commerce and subject to the terms and provisions of the Colorado Anti-Discrimination Act of 1957 and that said Commission had jurisdiction to hear and determine the complaint of Marlon D. Green against Continental.

(d) The position of pilot or co-pilot with Continental for which Marlon D. Green applied actually involved interstate operations.

The foregoing stipulations are entered into by the Commission and the parties hereto with the understanding that

the stipulations shall be included in the prior certified record and have the same effect as though certified by the Colorado Anti-Discrimination Commission to the District Court in and for the City and County of Denver, State of Colorado.

Charles S. Thomas, Assistant Attorney General, Attorney for Colorado Anti-Discrimination Commission, 104 State Capitol Building;

T. Raber Taylor, Attorney for Marlon D. Green, Suite 625—818 17th Street Building, Denver 2, Colorado.

[fol. 552] Holland & Hart, By Patrick M. Westfeldt, William C. McClearn, Warren L. Tomlinson, Attorneys for Continental Air Lines, Inc., 500 Equitable Building, Denver 2, Colorado.

Approved: William A. Black, Judge.

[fol. 557]

[File endorsement omitted]

IN THE DISTRICT COURT

IN AND FOR THE CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. B-29648

CONTINENTAL AIR LINES, INC., Petitioner,

vs.

COLORADO ANTI-DISCRIMINATION COMMISSION, and EDWARD MILLER, MRS. PAUL BUDIN, CLARENCE C. BELLINGER, GENE MANZANARES, ROBERT C. KEELER, GEORGE J. WHITE, and GEORGE O. CORY, Commissioners of said Commission, and MARLON D. GREEN, Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
JUDGMENT—January 7, 1961

This matter coming on for review of the proceedings and Order of the Colorado Anti-Discrimination Commission in

the matter of Marlon D. Green, Complainant, v. Continental Air Lines, Inc., Respondent, and the Court having reviewed the record, and having heard arguments of counsel, and having read the briefs of Mr. T. Raber Taylor, for Marlon D. Green, Complainant, Mr. Charles S. Thomas, for the Commission, and Messrs. Patrick M. Westfeldt, Mr. William C. McClearn, and Mr. Warren L. Tomlinson, of Holland & Hart, for Continental Air Lines, Inc.,

Doth find:

That the Complainant, Marlon D. Green, filed a complaint against Continental Airlines, Inc., on August 13, 1957, [fol. 558] alleging, in substance, as follows:

1. That Continental Airlines violated the Colorado Anti-Discrimination Act of 1957 by refusing to employ him as an airline pilot on or about July 8, 1957, because he is a negro;
2. That Continental failed to notify him as to their acceptance or rejection of his application as an airplane pilot within 10 days, as promised; and
3. That Continental violated the Act because its forms contain at least two specifications prohibited by the Colorado Anti-Discrimination Act, viz.: attachment of photograph and requiring applicant to state his race.

The Commission, after a hearing, entered the following Order:

" . . .

The Respondent (Continental) shall give to the Complainant (Green) the first opportunity to enroll in its training school in its next course, and the priority status of the Complainant shall be fixed as of June 24, 1957."

Continental Airlines appealed from the ruling on several grounds, which the Court will hereinafter review.

The Colorado Legislature, in 1937, enacted the following law:

"1953—C.S.A. 5-1-1: Short Title: This article is known and may be cited as "The Aeronautics Act of 1937."

"5-1-2: Navigation of Aircraft: The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction and airworthiness to the standards now, or hereafter to be [fol. 559] prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force.

"5-1-3: License for Navigation: The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating aircraft designated in section 5-1-2 in any form of navigation for which license to operate such aircraft would be required by the United States government shall have the qualifications necessary for obtaining and holding the class of license required by the United States government. It shall be unlawful for any person to engage in operating such aircraft within this state in any form of navigation unless he have such a license.

" * * *

"5-1-8: Interpretation: This article shall be so interpreted and construed as to effect its general purpose and to make uniform the law of those states which enact it and to harmonize as far as possible, with federal laws and regulations on the subject of aeronautics."

This Court must recognize that as early as 1937, the Colorado legislature recognized federal laws and regulations on the subject of aeronautics.

The Colorado Anti-Discrimination Act of 1957 provides:

" * * *

"(5) 'Employer' shall mean the state of Colorado or any political subdivision or board, commission, de-

partment, institution or school district thereof, and every other person employing six or more employees within the state; * * *

It will be thus seen, from the above provision, that the Colorado legislature was not attempting to legislate concerning problems involving interstate commerce.

[fol. 560] The evidence showed the Complainant, Green, received "an application blank" from Continental Airlines in San Francisco, at which time he was a citizen of Arkansas; he was interviewed in Denver; at the time he made a complaint, namely, August 13, 1957, he was a resident of the State of Michigan (folio 1), and he was not a licensed pilot under the federal law, nor under the Colorado Aeronautical Act, and did not become one until September 27, 1957 (folio 16), at which time he gave his residence as 734 South Smith Avenue, El Dorado, Arkansas.

It further appears that Green had filed complaints against United Airlines for unfair labor practices in the States of Washington, New York and the District of Columbia. In Michigan, he filed similar complaints against General Motors, Francis Aviation, and Abrams Aerial Survey Corporation. In Washington, D.C., Green filed similar complaints with the President's Committee on Government Contracts against Capital Airlines and the Air Division of General Motors.

This Court has not been advised of the disposition of these complaints; nor is it important that it has not been so advised.

Continental Airlines' first and second claims for relief, which attack the jurisdiction of the Commission and raise a constitutional issue, are directed to the same basic legal issue and may properly be considered together. The facts upon which this issue is predicated were the subject of a Court-approved stipulation between the parties and are as follows:

[fol. 561]. Continental is a commercial carrier by air, operating pursuant to a certificate of public convenience and necessity issued by the Civil Aeronautics Board. It provides air transportation for passengers, freight and United States mail between the states of Colorado, Texas,

Oklahoma, New Mexico, Kansas, Missouri, Illinois and California. Continental was admittedly engaged in interstate commerce and it was further agreed that the position with Continental for which Respondent, Green, applied involved interstate operations. At the time of the hearing before the Commission, Continental employed approximately 220 pilots, of whom 90 to 95 were based in Denver. The other pilots were stationed in Texas. Notwithstanding these facts, the Commission asserted jurisdiction to hear and determine Respondent Green's complaint against Continental.

The constitutional issue presented in this case is not whether the State of Colorado had the general authority, pursuant to its police power, to enact the Colorado Anti-Discrimination Act. The question is whether the Act may legally be applied to the interstate operations of Continental involved in this proceeding.

Continental maintains that the Act, as applied to it on the facts of this case, is unconstitutional and void under the provisions of Article 1, Section 8, Clause 3, of the United States Constitution, which reads as follows:

"The Congress shall have power . . . (Clause 3) To regulate Commerce with foreign Nations and among the several States and with the Indian Tribes; * * *

[fol. 562] Continental further contends that the United States Congress has pre-empted the field of law concerning racial discrimination in the interstate operations of carriers (both generally and specifically with relation to employment of interstate operating personnel) and has thereby precluded exercise of authority by the several states in this field.

The applicable rules of law on the constitutional issues are:

(a) In those areas of interstate commerce which by their nature require uniformity of regulation by a single authority, the states are without power to act even though Congress has not legislated on the subject; and

(b) In areas of interstate commerce which do not require such uniformity of regulation and in which the states may act because the matters are of peculiar local concern, whenever Congress does, by legislation, occupy the field, the states are thereafter without power to act.

In either (a) or (b) above, an attempt by a state to act is unconstitutional as a violation of the commerce clause of the United States Constitution and attempts of state agencies to apply such statutes are void and of no force and effect.

Congress has the power to regulate interstate commerce. *Article 1, Section 8, Clause 3, United States Constitution.* Early in the history of this country, the United States [fol. 563] Supreme Court held that the power of Congress to regulate interstate commerce was supreme and plenary. The power is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than as are prescribed in the Constitution." *Gibbons v. Ogden*, 9 Wheat. 1, 196, 6 L.Ed. 23, 70 (1824). This rule has never been altered and is today fully applicable.

The power of the Congress over interstate commerce does not mean that the States are completely without power to legislate in that field. In another early case, the United States Supreme Court held that in the absence of federal legislation regulating a particular area of commerce, the States could legislate on matters of peculiar local concern if the impact on interstate commerce did not interfere with the operation of that commerce. *Cooley v. Port Wardens of Philadelphia*, 12 How. 299, 13 L.Ed. 996 (1851). However, even when the Congress has not acted, States may not regulate matters which, because of their nature, require national uniform treatment. *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 65 S.Ct. 1515 (1945).

These rules were expressed as follows by the United States Supreme Court in the *Minnesota Rate Cases*, 230 U.S. 352, 33 S.Ct. 729 (1913):

"The grant in the Constitution of its own force, that is, without action by Congress, established the essential

immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their [fol. 564] regulation should be prescribed by a single authority. It has been repeatedly declared by this court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation." 33 S.Ct. at 740.

Although Congress has legislated extensively in the area of racial discrimination with reference to interstate air transportation and has thereby withdrawn this field from regulation by the several states, the Court will first consider whether racial discrimination by an interstate carrier is a subject which (a) must be free from diverse regulation by the several states and governed uniformly, if at all, by Congress, or (b) whether it is a matter of primarily local concern upon which the states can legislate until, but not after, Congress acts. The United States Supreme Court has clearly and directly ruled that this is a matter permitting only national action. Attempts by states either (a) to impose discrimination on account of race, or (b) prohibit such discrimination, have been held unconstitutional as applied to interstate carriers.

In *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547 (1877), the court had before it a Louisiana statute which prohibited discrimination in passenger accommodations within the state. The defendant, owner of a passenger steamship which traveled the Mississippi River between Louisiana and [fol. 565] Mississippi, had refused certain accommodations to a Negro and was sued by her. The Court concluded that the statute as applied to those engaged in the transportation of passengers among the States was unconstitutional. The Court said:

"But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without or goes out from within. While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. * * *

"It was to meet just such a case that the commercial clause in the Constitution was adopted. The River Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interest of others. Nay more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the River or its tributaries he might be required to observe one set of rules, and on the other, another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other side be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state

lines, has been invested with the exclusive legislative power of determining what such regulations shall be."

[fol. 566] The soundness of *Hall v. DeCuir* was expressly reaffirmed by the United States Supreme Court in 1946. *Morgan v. Virginia*, 328 U.S. 373, 66 S.Ct. 1050 (1946). Here a Virginia statute required segregation of white and colored passengers for both intra-state and interstate motor vehicle carriers. A Negro passenger making an interstate trip challenged the validity of the statute as a burden on interstate commerce. The Court found that the statute, as applied to interstate carriers, was unconstitutional. The Court reaffirmed the doctrine of *Hall v. DeCuir* in the following language:

"The factual situation set out in preceding paragraphs emphasizes the soundness of this court's early conclusion in *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547." 66 S.Ct. at 1057.

In conclusion, the Court said:

"It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid." 66 S.Ct. at 1058.

Mr. Justice Frankfurter, concurring in the Court's decision, stated:

"My brother Burton has stated with great force reasons for not invalidating the Virginia statute. But for me *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547, is controlling. Since it was decided nearly 70 years ago, that case on several occasions has been approvingly cited and has never been questioned. Chiefly for this reason I concur in the opinion of the court."

"The imposition upon national systems of transportation of a crazy-quilt of State laws would operate to burden commerce unreasonably, whether such contradictory

and confusing State laws concern racial commingling or racial segregation." 66 S.Ct. at 1059.

[fol. 567] The rule first set forth in *Hall v. DeCuir* and reaffirmed in *Morgan v. Virginia*, namely, that state regulation of the racial policies of interstate carriers constitutes a burden on interstate commerce because this area demands a "single, uniform rule to promote and protect national travel" has been often approved and applied. For example, in *Chance v. Lambeth*, 186 F.2d 879 (4th Cir. 1951), the Court held a regulation which required segregation of interstate passengers on a railroad to be unconstitutional because it imposed a burden on interstate commerce. The Court said:

"In *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547, the court held that a statute of Louisiana which required a carrier to give all persons traveling within the state upon public vehicles equal rights and privileges was an unconstitutional regulation of interstate commerce since otherwise each state would be at liberty to regulate the conduct of carriers while in its jurisdiction, resulting in great confusion and inconvenience and destroying the uniformity necessary to the operation of the carrier's business." 186 F.2d at 881.

Also following the rule of *Hall v. DeCuir* and *Morgan v. Virginia* are *Charles v. Norfolk & Western Railway Co.*, 188 F.2d 691 (7th Cir. 1951); *Whiteside v. Southern Bus Lines, Inc.*, 177 F.2d 949 (6th Cir. 1949); *William v. Carolina Coach Co.*, 111 F.Supp. 329 (E.D. Va. 1952), aff'd 207 F.2d 408 (4th Cir. 1953).

In *Pryce v. Swedish-American Lines*, 30 F.Supp. 371 (S.D. N.Y. 1939), plaintiff brought an action for damages against defendant shipline, alleging that it discriminated against her because of her color in violation of the New York civil rights law "while she was a passenger on defendant's vessel on a cruise from New York City to various South American ports and return." Defendant was a Swedish corporation and the vessel involved was under Swedish registry.

As one of two grounds for dismissing plaintiff's complaint, the Court said:

"There is, however, an even more compelling reason for refusing to apply Sections 40 and 41 of New York Civil Rights Law to the facts set forth in the second cause of action. To do so, would in effect be construing the statute as forbidding discrimination between passengers on the part of common carriers engaged in commerce between the port of New York and foreign ports. If construed in such a manner, the statute undoubtedly would illegally interfere with foreign commerce. See *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547." 30 F.Supp. at 372.

The *Pryce* case is a clear holding that to apply a state law forbidding racial discrimination to interstate or foreign commerce constitutes an unlawful interference with that commerce.

The important point is that the foregoing cases stand for the proposition ~~that the question of racial discrimination by interstate carriers is, in and of itself, of such a nature that uniform regulation by a single authority is required.~~ The burden on commerce lies in subjecting interstate carriers to the law-making powers of the legislatures in the several states through which such carriers move. The foregoing cases and others show the practical obstructions and burdens that result from such diversity of regulatory power. The diversity of this regulatory power is the burden on interstate commerce which is unconstitutional.

All of the states of the United States are sovereign within constitutional limits. What any particular state law is [fol. 569] today or what it may be tomorrow, and whether or not any one or more of such states have any laws on the subject is of no significance. If an interstate carrier is subject to the regulatory power of all of the states through which it passes, it is automatically subject to non-uniform regulation. Such non-uniform regulation is what the United States Supreme Court has held to be barred by the commerce clause.

Respondent, Green, relies principally upon two cases, which the Court will discuss.

In *Bob-Lo Excursion Co. v. Michigan*, 333 U.S. 28, 68 S.Ct. 358 (1948), a conviction under a Michigan civil rights statute was upheld. Defendant had refused to permit a Negro on its excursion boat which traveled between Detroit, Michigan, and Bois Blanc Island, a small island in the Detroit River about 15 miles from Detroit. Bois Blanc Island, which was almost entirely owned in fee by defendant and was used by it as an amusement park, was technically across the international boundary in Canada. However, there was no access to the island from Canada or in any way other than on defendant's excursion boat. The opinion does not indicate that defendant held a certificate of public convenience and necessity from any federal agency. Based upon these facts it was held that defendant's conviction under the Michigan statute did not violate the commerce clause in the United States Constitution. But the Court carefully limited its holding to the unusual facts before it, saying, in part:

[fol. 570] "Of course, we must be watchful of state intrusion into intercourse between this country and one of its neighbors. But if any segment of foreign commerce can be said to have a special local interest, apart from the necessity of safeguarding the federal interest in such matters as immigration, customs and navigation, the transportation of appellant's patrons falls in that characterization. It would be hard to find a substantial business touching foreign soil of more highly local concern." 68 S.Ct. at 361-62.

In addition, the Court took pains to carefully distinguish the unique *Bob-Lo* situation from the doctrine established by the *Morgan* and *Hall* cases. It said:

"Appellant hardly suggests that the power of Congress over foreign commerce excludes all regulation by the states. But it verges on that view in regarding *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547, supplemented by *Morgan v. Virginia*, 328 U.S. 373, 66 S.Ct. 1050, 90 L.Ed. 1317, 165 A.L.R. 574, and *Pryce v. Swedish*

American Lines, D.C., 30 F.Supp. 371, as flatly controlling this case. We need only say that no one of those decisions is comparable in its facts, whether in the degree of localization of the commerce involved; in the attenuating effects, if any, upon the commerce with foreign nations and among the several states likely to be produced by applying the state regulation; or in any actual probability of conflicting regulations by different sovereignties. None involved so completely and locally insulated a segment of foreign or interstate commerce. In none was the business affected merely an adjunct of a single locality or community as is the business here so largely. And in none was a complete exclusion from passage made. The Pryce case, of course, is not authority in this Court, and we express no opinion on the problem it presented. The regulation of traffic along the Mississippi River, such as the Hall case comprehended and of interstate motor carriage of passengers by common carriers like that in the Morgan case, are not factually comparable to this regulation of appellant's highly localized business, and those decisions are not relevant here." 68 S.Ct. at 363-364.

It is thus quite clear that the U. S. Supreme Court did not intend to detract from nor diminish the doctrine of *Morgan* and *Hall*. It is equally apparent that the facts in the present case, involving frequent high-speed air transport [fol. 571] between eight states pursuant to certification from the Civil Aeronautics Board, are much more akin to the transportation involved in *Morgan* and *Hall* than to the highly local, non-commercial traffic with which *Bob-Lo* was concerned.

During oral argument before this Court, Respondent, Green, indicated primary reliance upon *Railway Mail Association v. Corsi*, 326 U.S. 88, 65 S.Ct. 1483 (1945). The *Corsi* case did not in any way involve the commerce clause of the U. S. Constitution. *Corsi*, interpreted most favorably to Respondents, only held neither the due process clause of the 14th Amendment, nor the equal protection clause, nor the clause conferring authority over postal matters

upon Congress prevented a state from adopting a civil rights statute. The application of such a statute to interstate commerce was neither raised nor discussed nor decided.

There is perhaps less permissible state regulation of interstate transportation than any other area of commerce. The characteristics of interstate transportation, namely, definite, regular and frequent contacts with numerous states, require that many aspects of interstate transportation be left free from state regulation. The speed and complexity of long-distance air transportation renders it even less susceptible to state regulation than the river boat travel involved in *Hall v. DeCuir*, or the motor vehicle transportation in *Morgan v. Virginia*.

The foregoing cases hold that the states may not regulate the racial policies of the interstate operations of carriers, [fol. 572] and they are consistent with a body of law regulating interstate commerce which has been developed and uniformly applied for nearly 150 years.

In *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 65 S.Ct. 1515 (1945), the Supreme Court declared unconstitutional the Arizona Train Limit Law which prescribed the maximum number of passenger and freight cars for trains operating in the state. The Court reiterated familiar rules when it said:

"But ever since *Gibbons v. Ogden*, 9 Wheat. 1, 6 L.Ed. 23, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need for national uniformity, demand that their regulation, if any, be prescribed by a single authority." 65 S.Ct. at 1519.

In holding the law unconstitutional, the Court said:

"Enforcement of the law of Arizona, while train lengths remain unregulated or are regulated by varying standards in other states, must inevitably result in an impairment of uniformity of efficient railroad operation because the railroads are subjected to regulation which is not uniform in its application. Compliance

with a state statute limiting train lengths requires interstate trains of a length lawful in other states to be broken up and reconstituted as they enter each state according as it may impose varying limitations upon train lengths. The alternative is for the carrier to conform to the lowest train limit restriction of any of the states through which its trains pass, whose laws thus control the carriers' operations both within and without the regulating state." 65 S.Ct. at 1522.

The Court clearly recognized that the Arizona law would of necessity affect operations in other states when it said:

"The practical effect of such regulation is to control train operations beyond the boundaries of the state exacting it because of the necessity of breaking up and reassembling long trains at the nearest terminal points before entering and before leaving the regulating state." 65 S.Ct. at 1523.

[fol. 573] In *Southern Pacific Co. v. Marie Jensen*, 244 U.S. 205, 37 S.Ct. 524 (1917), the Supreme Court held that New York Workmen's Compensation Laws could not be applied to stevedores working in the maritime industry. The Court drew a parallel between federal power over maritime matters and federal power over interstate transportation, referring to the latter in the following language:

"A similar rule in respect to interstate commerce, deduced from the grant to Congress of power to regulate it is now firmly established. Where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the states, such as transportation between the states, including the importation of goods from one state to another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free." 37 S.Ct. 529.

Many state attempts to regulate interstate transportation operations have been struck down by the United States

Supreme Court. A state statute requiring the use of a contour type of rear fender mudguard on interstate trucks conflicted with the commerce clause and was unconstitutional. *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S.Ct. 962 (1959). A state statute requiring interstate trains to greatly reduce their speed at grade crossings was found to be a burden on interstate commerce. *Seaboard Air Line Railway Co. v. Blackwell*, 244 U.S. 310, 37 S.Ct. 640 (1917). A state was without constitutional power to order a railroad to remove bridges over which its interstate trains passed even though the bridge removal was a part of the State's flood control program. *Kansas City [fol. 574] Southern Ry. Co. v. Kaw Valley Drainage District*, 233 U.S. 75, 34 S.Ct. 564 (1914). Burdensome intra-state stops by interstate trains cannot be demanded. *Herdon v. Chicago, Rock Island & Pacific Ry. Co.*, 218 U.S. 135, 30 S.Ct. 633 (1910); *St. Louis-San Francisco Ry. Co. v. Public Service Commission*, 261 U.S. 369, 43 S.Ct. 380 (1923). A state may not require that interstate trains leave their scheduled stops on time. *Missouri, K. & T. Railway Co. v. Texas*, 245 U.S. 484, 38 S.Ct. 178 (1918). And a local ordinance regulating the maximum number of passengers per car and the minimum number of cars required for a street railway company operating between cities in two states was invalid. *South Covington and Cincinnati Street Railway Co. v. Covington*, 235 U.S. 537, 35 S.Ct. 158 (1915). In this case, the Court said:

"If Covington (a city in Kentucky) can regulate these matters, then certainly Cincinnati (in Ohio) can, and interstate business might be impeded by conflicting and varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced, and on the other side quite a different set, and both seeking to control a practically continuous movement of cars. As was said in *Hall v. DeCuir*, 95 U.S. 485, 489, 24 L.Ed. 547, 548, 'commerce cannot flourish in the midst of such embarrassments.'" 35 S.Ct. at 161.

Thus, an unbroken line of United States Supreme Court cases over a period of nearly 150 years has established that

the national power over interstate commerce is supreme and plenary; that even when Congress has not acted the states will not be permitted to regulate this commerce in [fol. 575] areas in which a uniform rule is needed because diversity of regulatory power creates an unconstitutional burden, that the racial policies pertaining to the interstate operations of carriers is an area in which a uniform rule is needed and only Congress can legislate, and that this, among many other aspects of interstate transportation, must remain free from regulation by the states.

Congress has regulated the activity involved in this case and thereby pre-empted the field, leaving the state without authority to act. The applicable rules concerning pre-emption are set forth in *Kelly v. State of Washington*, 302 U.S. 1, 58 S.Ct. 87 (1937):

"The state court took the view that Congress had occupied the field and that no room was left for state action in relation to vessels plying on navigable waters within the control of the federal government . . .

"This argument, invoking a familiar principle, would be unnecessary and inapposite if there were a direct conflict with an express regulation of Congress acting within its province. The argument presupposes the absence of a conflict of that character. The argument is also unnecessary and inapposite if the subject is one demanding uniformity of regulation so that state action is altogether inadmissible in the absence of federal action. In that class of cases the Constitution itself occupies the field even if there is no federal legislation. The argument is appropriately addressed to those cases where states may act in the absence of federal action but where there has been federal action governing the same subject." 58 S.Ct. at 91.

The Court stated that the doctrine of pre-emption is not applicable where there is a direct conflict between state law and federal law. In such a case the federal law is the supreme law of the land. In addition, the Court in the *Kelly* [fol. 576] case pointed out that the pre-emption rule is inapplicable if the subject is one demanding uniformity of regulation.

By virtue of any one of several federal statutes and regulatory systems, an interstate air carrier is prohibited from racial discrimination. As to those employers, federal legislation pre-empts the field.

The Railway Labor Act prohibits racial discrimination. The Railway Labor Act (45 U.S.C.A., Sections 151, et seq.) (hereinafter referred to as the R.L.A.), which was extended to cover interstate air carriers by a 1936 amendment (45 U.S.C.A., Sections 181; et seq.), is a comprehensive federal statute prescribing the duties of interstate air carriers with respect to their employees. There is no specific, detailed section of the R.L.A. which specifically treats the matter of racial discrimination. However, the United States Supreme Court has considered the provisions of the R.L.A. and has clearly held that racial discrimination by employers subject thereto is forbidden.

The latest pronouncement by the Supreme Court on this point came in *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99 (1957). Petitioners were Negro railway employees who contended that the union had failed to represent them equally and in good faith and had failed to protect them from unjustified discharge and loss of seniority. The Court expressed its interpretation of the statute in clear terms in the opening words of its opinion:

"Once again Negro employees are here under the Railway Labor Act asking that their collective bargaining [fol. 577] agent be compelled to represent them fairly. In a series of cases beginning with *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 65 S.Ct. 226, this Court has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employees in the bargaining unit fairly and without discrimination because of race and has held that the courts have power to protect employees against such invidious discrimination." 78 S.Ct. at 100.

The Court went on to say:

"Here, the complaint alleged, in part, that petitioners were discharged wrongfully by the Railroad, and that

the Union, acting according to plan, refused to protect their jobs as it did those of white employees or to help them with their grievances all because they were Negroes. If these allegations are proven there has been a manifest breach of the Union's statutory duty to represent fairly and without hostile discrimination all of the employees in the bargaining unit. This Court squarely held in *Steele* and subsequent cases that discrimination in representation because of race is prohibited by the Railway Labor Act." 78 S.Ct. at 102.

In *Steele v. Louisville & Nashville RR.*, 323 U.S. 192, 65 S.Ct. 226 (1944), referred to above as the leading case in this field, the Court said:

"We think that the Railway Labor Act imposes upon the statutory representative of the craft at least as exacting a duty to protect equally the interests of the members of the craft as the constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates . . . We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of the craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them."

See also *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210, 65 S.Ct. 235 (1944); *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, [fol. 578] 338 U.S. 232, 70 S.Ct. 14 (1949).

The scope of these holdings by the Supreme Court is made clear by *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 72 S.Ct. 1022 (1952). Whereas in the *Steele* case the Negro petitioners had admittedly been members of the craft (locomotive firemen) but had not been members of the union (because membership was denied to them on account of race), in *Howard* "the colored employees had for many years been treated by the carriers and the

Brotherhood as a separate class for representation purposes and have in fact been represented by another union of their own choosing." 72 S.Ct. at 1025. However, it was alleged that the Brotherhood, under a threat of strike action, forced the employer to enter into a collective bargaining agreement which would have the inevitable result of abolishing the Negroes' jobs and replacing them with Brotherhood members. By this action the union was in effect forcing the employer, an interstate rail carrier, to discriminate against Negro porters in the tenure of their employment. This is exactly the same field of law covered by the Colorado Act. The U.S. Supreme Court brushed aside the plea to restrict its earlier holdings to instances of discrimination by the union against members of the class it represented with the following language:

"Since the Brotherhood has discriminated against 'train porters' instead of minority members of its own 'craft', it is argued that the Brotherhood owed no duty at all to refrain from using its statutory bargaining power so as to abolish the jobs of the colored porters and drive them from the railroads. We think this argument is unsound and that the opinion in the Steele case points [fol. 579] to a breach of statutory duty by this Brotherhood.

"As previously noted, these train porters are threatened with the loss of their jobs because they are not white and for no other reason. The job they did hold under its old name would be abolished by the agreement; their color alone would disqualify them for the old job under its new name. The end result of these transactions is not in doubt; for precisely the same reasons as in the Steele case 'discriminations based on race alone are obviously irrelevant and invidious.'" 72 S. Ct. at 1025.

And finally the Court held that the employer as well as the union was subject to the duty and obligation to treat its employees without discrimination based on race by permanently enjoining the railroad as well as the union from using the contract or any other device to oust the Negro

porters from their jobs. This portion of the Court's opinion reads:

"On remand, the District Court should permanently enjoin the Railroad and the Brotherhood from use of the contract or any other similar discriminatory bargaining device to oust the train porters from their jobs." 72 S.Ct. at 1026.

It is, of course, not material that the public policy or objectives behind both the federal and the Colorado legislation are similar. As stated by Mr. Justice Holmes, speaking for the Court in *Charleston & Western Carolina Ry. v. Varnville Furniture Co.*, 237 U.S. 597, 35 S.Ct. 715 (1915):

"When Congress has taken the particular subject matter in hand, coincidence (of state regulation) is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." 35 S.Ct. at 717. —

See also *Wabash Railway Co. v. Illinois*, 118 U.S. 557, 7 [fol. 580] S.Ct. 4 (1886), where a state's attempt to prevent discriminatory railway rates was struck down because it was a subject of "general and national character", even though federal regulation would not sanction discriminatory railway rates either.

In summary, the Supreme Court decisions over a number of years require nondiscriminatory representation by labor unions. In addition, the Supreme Court in the *Howard* case clearly held that the R.L.A. requires the same nondiscriminatory treatment by an interstate rail carrier employer with respect to its employees. Hence, the R.L.A., as interpreted by the United States Supreme Court, occupies the field of law relating to discrimination in matters of employment by interstate rail and air carriers.

Such pre-emption necessarily precludes any attempt by Colorado, as in the instant case, to extend its regulatory activities in the field to the interstate operations of an air carrier.

The Civil Aeronautics Act prohibits racial discrimination. Not only has the field of racial discrimination by interstate

air carriers been pre-empted by the R.L.A., but it is also covered by the Civil Aeronautics Act, hereinafter referred to as the C.A.A., 49 U.S.C.A. Sections 401, et seq. It should be noted that in 1958, the C.A.A. was repealed and replaced with a new statute known as the Federal Aviation Program Act, hereinafter referred to as the F.A.P.A., 49 U.S.C.A. (Supp.) Sections 1301, et seq. However, the effective date [fol. 581] of the F.A.P.A., insofar as it supersedes the earlier provisions of the C.A.A. applicable to this case, was not earlier than December 31, 1958. (See annotation following 49 U.S.C.A. (Supp.) Section 1301.) Respondent Green's complaint against Continental, which was filed with the Commission on or about August 13, 1957, referred to acts which allegedly occurred in June and July of 1957. As a consequence, the C.A.A. and not the F.A.P.A. was in effect during all times material to this action.

The Civil Aeronautics Act regulates practically every phase of an interstate air carrier's operations. The public policy of this act is set forth in the broadest terms. 49 U.S.C.A. Section 402. Extensive control is exercised over flight crew personnel. 49 U.S.C.A. Sections 551-560. Such employees are licensed or certified by the Civil Aeronautics Board, and that Board may under certain circumstances revoke or suspend certificates or licenses. The disciplinary power of the Board over flight crew personnel is very broad. For instance, the Civil Aeronautics Board has the power to suspend or revoke pilots' certificates for bad judgment even though the pilot violated no statute, rule or regulation. *Hard v. CAB*, 248 F.2d 761 (7th Cir. 1957); *Wilson v. CAB*, 244 F.2d 773 (D.C. App. 1957). The statute delegates extensive power to the Board, including the power to conduct investigations and issue orders, rules and regulations. 49 U.S.C.A. Section 425. Pursuant to that power, the Board regularly issues orders and has promulgated a large volume of rules and regulations touching practically [fol. 582] all phases of interstate air carriage. 14 Code Fed. Regs.

The "intensive and exclusive" control of the Federal Government over air commerce was discussed by the United States Supreme Court in *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 64 S.Ct. 950 (1944). The following lan-

guage from the concurring opinion of Mr. Justice Jackson is particularly illuminating:

"Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection in the hands of federally certificated personnel and under an intricate system of federal commands." 64 S.Ct. at 956.

In *Allegheny Airlines, Inc. v. Village of Cedarhurst*, 132 F.Supp. 871 (E.D.N.Y. 1955), the Court had before it the specific contention that the federal statutes had pre-empted one aspect of air commerce. The Village of Cedarhurst, located near Idlewild Airport in New York, enacted an ordinance prohibiting air flights above the city at an altitude of less than 1,000 feet. In holding the Cedarhurst ordinance unconstitutional, the Court said:

"The plaintiffs' contention that the legislative action by the Congress together with the regulations, adopted pursuant thereto, have regulated air traffic in the navigable airspace in the interest of safety to such an extent as to constitute pre-emption in that field is upheld. The States, including the Village of Cedarhurst, are thus precluded from enacting valid contrary or conflicting legislation." 132 F.Supp. at 881.

In *Fitzgerald v. Pan American World Airways*, 229 F.2d [fol. 583] 499 (2d Cir. 1956), the plaintiffs alleged that they were denied first-class passage on one of defendant's airplanes because of their race and that such conduct violated the Civil Aeronautics Act, 49 U.S.C.A. Section 484(b), which provided in part as follows:

"No air carrier . . . shall . . . subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The Court held that this section prohibited racial discrimination by interstate air carriers and that it created an actionable civil right for the vindication of which the person harmed could bring a federal court action. The Court said:

"Although we regard it as not controlling, we note also the following: *Congress sought uniformity in the practices of those subject to this Act.* It is by no means clear that, in all states and territories, the common-law rules would render unlawful racial differentiations in accord with the 'separate but equal doctrine,' whereas, in the light of recent Supreme Court decisions, we must construe Section 484(b) so that that doctrine will not apply." 229 F.2d at 502.

The language italicized in the last quoted portion of the *Fitzgerald* case shows that Congress considered uniformity in practices of interstate air carriers to be necessary. This is in effect both a legislative and judicial interpretation to the effect that uniform rather than diverse regulation is necessary.

The *Fitzgerald* case is also a clear holding that racial discrimination in interstate air commerce is prohibited by federal law. Although the case itself involved discrimination against a passenger, there can be no doubt that the same [fol. 584] rule would apply to discrimination in matters of employment. The statute condemns "unjust discrimination" against "any . . . person" by an air carrier. "Person" certainly includes employees. Moreover, a subsequent case approved the broad interpretation which was given to section 484(b) by the Court in the *Fitzgerald* case. Judge Lumbard, concurring in *Spirt v. Bechtel*, 232 F.2d 241 (2d Cir. 1956), made the following comments:

"The authorities cited by our dissenting colleague are not in point, it seems to me, because in those cases there was good reason to believe, and this court found, that Congress was enacting legislation for the benefit of a class. The court therefore concluded that the right of a member of the protected class to bring a

civil suit should flow from the legislation. A clear case of this is our recent decision in *Fitzgerald v. Pan American World Airways, Inc.*, 229 F. 2d 499. We were there concerned with 49 U.S.C.A. Sec. 484(b) which protects against unjust discrimination by air carriers. The plaintiffs were persons allegedly harmed by unjust discrimination and were clearly within a class which Congress sought to protect." 232 F. 2d at 250.

In interpreting the Interstate Commerce Act, which contains language practically identical to the portion of the C.A.A. discussed in the *Fitzgerald* case, the U. S. Supreme Court, in *Mitchell v. United States*, 313 U.S. 80, 61 S. Ct. 873 (1941), stated among other things, as follows:

"We have repeatedly said that it is apparent from the legislative history of the Act that not only was the evil of discrimination the principal thing aimed at, but that there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. (Citations omitted.) Paragraph 1 of Section 3 of the Act says explicitly that it shall be unlawful for any common carrier subject to the Act 'to subject any particular [fol. 585] person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.' 49 U.S.C. Section 3, 49 U.S.C.A. Section 3. From the inception of its administration the Interstate Commerce Commission has recognized the applicability of this provision to discrimination against colored passengers because of their race and the duty of carriers to provide equality of treatment with respect to transportation facilities; that is, that colored persons who buy first-class tickets must be furnished with accommodations equal in comforts and conveniences to those afforded to first-class white passengers." 61 S. Ct. at 877.

There are other reasons why it can only be concluded that the federal aeronautics statutes prohibit racial dis-

crimination by interstate air carriers and therefore leave the states without authority to act in this field. The section setting forth the declaration of policy in the federal statute reads in material part as follows:

"In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

• • •

"(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;" 49 U.S.C.A. Section 402.

If anything, this section, which sets forth the objectives which Congress sought to achieve by the Act, is even more specific than the section held in the *Fitzgerald* case to prohibit racial discrimination.

In addition, as noted earlier herein, the original Civil Aeronautics Act was repealed and re-enacted, with amendments, as the Federal Aviation Program Act. 49 U.S.C.A. [fol. 586] (Supp.) Sections 1301, et seq. The section held in the *Fitzgerald* case to prohibit racial discrimination by interstate air carriers (49 U.S.C.A. Section 484(b)) was re-enacted without one word being changed. 49 U.S.C.A. (Supp.) Section 1374(b). It is a well-known rule that when a legislative body enacts without change a statute which has been judicially construed, the legislature is deemed to have approved and adopted the construction placed upon that act by the courts.

The *Fitzgerald* case is in accord with other decisions construing similar language in the federal statutes regulating other modes of interstate transportation. In *National Association for Advancement of Colored People v. St. Louis-San Francisco Rwy. Co.*, ICC No. 31423, 1 Race Rel. Law Rep. 263 (1956), the Interstate Commerce Commission ruled that the statute under which it functions prohibited passenger segregation on interstate rail travel.

The Commission said:

"The complainants invoke our authority to prevent violations of section 3(1), which makes it unlawful for a rail carrier 'to subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.' The disadvantage to a traveler who is assigned accommodations or facilities so designated as to imply his inherent inferiority solely because of his race must be regarded under present conditions as unreasonable."

See also *Keys v. Carolina Coach Co.*, ICC No. MC-C-1564, 1 Race Rel. Law Rep. 272 (1956), where the Commission ruled that racial discrimination in bus transportation was prohibited by the applicable federal statute. The statutory language involved in this case was exactly the same as that found in the C.A.A. and given the same construction in the *Fitzgerald* case.

[fol. 587] The comprehensive scope of federal legislation with respect to interstate air carriers is obvious. When the pervasiveness of federal regulation of the industry generally is considered in connection with the specific federal laws and regulations (and the cases interpreting those laws and regulations) prohibiting racial discrimination by interstate air carriers, there can be no doubt but that federal law has covered the subject matter involved herein and leaves no room for the application of Colorado Law.

Executive orders prohibit discrimination by Government contractors. This is yet another federal regulatory system which covers racial discrimination by Petitioner and others similarly situated. By Executive Order 10479, August 13, 1953, the President established the Government Contracts Committee. The purpose of the committee is to prevent persons contracting with the federal government from discriminating on account of "race, creed, color or national origin." The committee recommended, and the President ordered in Executive Order 10557, September 3, 1954, that the following clause be included in all contracts executed by the contracting agencies of the federal government:

"In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter [fol. 588] in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause."

As a certificated commercial carrier by air, Petitioner is obligated to and in fact does transport United States mail under contract with the United States Government. 49 U.S.C.A. Section 485(a), 49 U.S.C.A. (Supp.) Section 1375. Therefore, Continental remains constantly in the status of one contracting with the federal government and subject to the non-discrimination policy required of such contractors. Specifically, Continental is prohibited from discriminating against "any employee or applicant for employment" because of race "in connection with the performance of any work" under government contracts. Obviously, members of flight crews are engaged in the performance of work in connection with transporting the mail. Again, federal regulation occupies the field.

If federal law occupies a field, it does so exclusively and it is immaterial whether or not the federal power is exercised. Perhaps the outstanding example of this principle is *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 S.Ct. 598 (1957). The Court held in effect that where the matter of prevention of unfair labor practices affecting commerce had been occupied by the National Labor Relations Act, the occupation was exclusive and barred state action pursuant to state law, notwithstanding the fact that the NLRB had refused to act in the specific matter because of jurisdictional yardsticks established by it. The case is famous be-

cause the Court was fully aware of the so-called no man's land which existed where the federal government had jurisdiction [fol. 589] but refused to act and the state government could not act. Nevertheless, Federal law "pre-empted" the field and the state was powerless to act.

To the same effect is *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773 (1959). The Court there held that state labor law could not enter fields which might arguably (though not definitely) be covered by the federal labor act. Several statements made by the Court indicate the breadth of the doctrine of pre-emption and the restrictions placed upon the extension of state law into areas covered by federal law:

"In the light of these principles, the case before us is clear. Since the National Labor Relations Board has not adjudicated the status of the conduct for which the State of California seeks to give a remedy in damages, and since such activity is arguably within the compass of Section 7 or Section 8 of the Act, the State's jurisdiction is displaced.

• • •

"Even the States' salutary effort to redress private wrongs or grant compensation for past harms cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme." 79 S.Ct. at 780.

These recent United States Supreme Court decisions delineate the scope of the pre-emption doctrine. The Railway Labor Act, the Civil Aeronautics Act and the Executive Orders pertaining to Government Contractors all deal directly and forcefully with racial discrimination by interstate air carriers. Hence, Colorado's racial policies may not be extended to this area.

[fol. 590] In conclusion, the Court finds that the Colorado Act may not constitutionally be extended to cover the flight crew personnel of an interstate air carrier.

Accordingly, the findings of the Colorado Anti-Discrimination Commission are set aside, and the Complaint of Mahlong D. Green is dismissed.

The Court orders that a Motion for a New Trial be dispensed with, and if filed, would be overruled.

Dated this 7th day of January, A.D. 1961.

By the Court:

William A. Black, District Judge.

[fol. 593] [File endorsement omitted]

IN THE DISTRICT COURT IN AND FOR
THE CITY AND COUNTY OF DENVER,
COLORADO

Civil Action No. B-29648

[Title omitted]

STIPULATION—Filed February 23, 1961

It is hereby stipulated and agreed by and between the parties hereto:

1. That the record in the Supreme Court of Colorado in case No. 19215, entitled "The Colorado Anti-Discrimination Commission, et al., Plaintiffs in Error, vs. Continental Air Lines, Inc., Defendant in Error," consisting of folios numbered 1 through 215, being the record in this cause upon a prior appeal to the Supreme Court of Colorado, be considered as a part of the record on error in the within cause.

2. That the record on error in this cause which begins with folio 216 relates to matters subsequent to the order in case No. 19215 whereby the Supreme Court heretofore remanded said cause to the District Court for further proceedings.

3. That the parties hereto orally stipulated on October 25, 1960, with Court approval, that if the Commission record had been remanded to the Commission the signature of each member of the Commission would have been added to the last page of the Commission's orders of December 19, 1958 and January 7, 1959.

Dated this 22nd day of February, 1961.

Duke W. Dunbar, Attorney General, Frank E. Hickey, Deputy Attorney General, Charles S. [fol. 594] Thomas, Assistant Attorney General, 104 State Capital, Denver 2, Colorado, Attorneys for Respondents.

T. Raber Taylor, 818-17th Street Bldg., Denver 2, Colorado, Attorney for Marlon D. Green.

Holland & Hart, By William C. McClearn, Equitable Building, Denver 2, Colorado, Attorneys for Petitioner.

The inclusion of the foregoing stipulation in the record of error in the above-captioned matter is hereby approved.

Dated at Denver, Colorado this 23rd day of February, 1961.

By the Court:

Neil Horan, District Judge.

[fol. 637]

IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 19771

THE COLORADO ANTI-DISCRIMINATION COMMISSION and EDWARD MILLER, MRS. PAUL BUDIN, CLARENCE C. BELLINGER, GENE MANZANARES, ROBERT C. KEELER, GEORGE J. WHITE, and GEORGE O. CORY, as members of said Commission and MARLON D. GREEN, Plaintiffs in Error,

v.

CONTINENTAL AIR LINES, INC., Defendant in Error.

Error to the District Court
of the
City and County of Denver

Honorable William A. Black, Judge.

En Banc

Judgment Affirmed

Mr. Duke W. Dunbar, Attorney General, Mr. Frank E. Hickey, Deputy Attorney General, Mr. Charles S. Thomas, Assistant Attorney General, Attorneys for Plaintiff in Error, Anti-Discrimination Commission.

Mr. T. Raber Taylor, Attorney for Plaintiff in Error, Marlon D. Green.

Messrs. Holland & Hart, Mr. Patrick M. Westfeldt, Mr. William C. McClearn, Mr. Warren L. Tomlinson, Attorneys for Defendant in Error.

[fol. 638] Mr. Burke Marshall, Assistant Attorney General, Mr. Harold H. Green, Mr. David Rubin, Attorneys for the United States.

Mr. Arnold Forster of the New York Bar, General Counsel, Mr. Paul Hartman, of the New York Bar, Mr. Sol Rabkin, of the New York Bar, Associate Counsel, For the Anti-Defamation League of B'nai B'rith.

Mr. Edwin J. Lukas, of the New York Bar, General Counsel, Mr. Theodore Leskes, of the New York Bar, Associate Counsel, For the American Jewish Committee.

Messrs. Donaldson, Hoffman & Goldstein, Counsel for the Anti-Defamation League of B'nai B'rith.

Mr. Charles Rosenbaum, Counsel for the American Jewish Committee.

Mr. Mandel Berenbaum, Mr. Louis G. Isaacson, Mr. Joseph Mosko, Mr. James Radetsky, Mr. Stanton Rosenbaum, Mr. Walter M. Simon, Mr. Anthony F. Zarlengo, Mr. William S. Powers, Amici Curiae.

OPINION—February 13, 1962

Mr. Justice Moore delivered the opinion of the Court.

[fol. 639] Marlon D. Green filed a complaint before the Colorado Anti-Discrimination Commission in which he alleged that the Continental Airlines violated the Colorado Anti-Discrimination Act of 1957 by refusing to employ him as an airline pilot on or about July 8, 1957, because he is a Negro. It was further alleged that Continental Airlines violated the said act in that its forms of application for employment as a pilot contain at least two specifications prohibited by the act, namely, attachment of a photograph and requiring the applicant to state his race.

After a hearing before the Commission it ordered that:

"The Respondent (Continental) shall give to the Complainant (Green) the first opportunity to enroll in its training school in its next course, and the priority status of the Complainant shall be fixed as of June 24, 1957."

On review of the commission's order the district court held that the Colorado Anti-Discrimination Act, in so far as it purported to regulate the employment of flight crew personnel of an interstate air carrier, was invalid as creating a burden upon interstate commerce. The trial court entered a judgment ordering the dismissal of Green's com-

plaint before the commission. Green and the commission are here by writ of error seeking reversal of the judgment. [fol. 640] In 1937 the General Assembly enacted the following statutes—(now C.R.S. '53, 5-1-2, 5-1-3 and 5-1-8).

"5-1-2: NAVIGATION OF AIRCRAFT: The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction and airworthiness to the standards now, or hereafter to be prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force.

"5-1-3: LICENSE FOR NAVIGATION: The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating aircraft designated in section 5-1-2 in any form of navigation for which license to operate such aircraft would be required by the United States government shall have the qualifications necessary for obtaining and holding the class of license required by the United States government. It shall be unlawful for any person to engage in operating such aircraft within this state in any form of navigation unless he have such a license.

"5-1-8: INTERPRETATION: This article shall be so interpreted and construed as to effect its general purpose and to make uniform the law of those states which enact it and to harmonize as far as possible, with federal laws and regulations on the subject of aeronautics."

Thus, in 1937 the legislature gave recognition to federal laws and regulations in the realm of aeronautics.

The Colorado Anti-Discrimination Act of 1957 provides in C.R.S. '53, 80-24-2 (5) :

“‘Employer’ shall mean the state of Colorado or any political subdivision or board, commission, department, institution or school district thereof, and every [fol. 641] other person employing six or more employees within the state; * * *”

80-24-6 (2) provides that it shall be an unfair employment practice,

“For an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, because of race, creed, color, national origin or ancestry.”

Continental Airlines, among other defenses not necessary to consider, raises the question of whether the Anti-Discrimination Commission has any jurisdiction over the subject matter of the action.

It is admitted that Continental is a commercial carrier by air; that it operates pursuant to a certificate of public convenience and necessity issued by the Civil Aeronautics Board. The company provides air transportation for passengers, freight, and United States mail between the states of Colorado, Texas, Oklahoma, New Mexico, Kansas, Missouri, Illinois and California. Continental was admittedly engaged in interstate commerce, and it was further agreed that the particular employment sought by Green involved interstate operations.

[fol. 642] Continental contends that the Colorado statute under which these proceedings were instituted, as applied to the facts of this case, is unconstitutional and void under Article I, Sec. 8, clause 3 of the Constitution of the United States which provides :

“The Congress shall have power * * * To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

Congress has pre-empted the field of law concerning racial discrimination in the interstate operations of carriers (generally and specifically with relation to employment of interstate operating personnel) and has thereby precluded exercise of authority by the several states in this field.

The trial court adjudged in effect that the Colorado Anti-Discrimination Act cannot constitutionally be extended to cover the hiring of flight crew personnel of an interstate air carrier; that if said Act be applied to the hiring contracts of interstate air carriers it would unconstitutionally burden interstate commerce and would amount to an invasion of a field pre-empted by the United States under (a) The Railroad Labor Act; (b) the Civil Aeronautics Act; and (c) Federal executive orders dealing with discrimination by employers contracting with the federal government. The trial court entered judgment setting aside the findings of the commission and dismissing Green's complaint.

[fol. 643] The United States and certain other groups interested in the subject matter of the controversy were granted leave to file briefs as amici curiae. In the brief filed by the Assistant Attorney General of the United States, argument is advanced under separate captions as follows:

"I. The Commission's assertion of jurisdiction herein does not unconstitutionally burden commerce.

"II. Colorado is not precluded by federal legislative or executive action from applying its anti-discrimination policy to the hiring practices of interstate air carriers."

Counsel for Green, in substance, make the same argument on the question of whether the State of Colorado has jurisdiction to regulate the hiring practices of those engaged in interstate air transportation.

With reference to the above stated propositions Continental presents lengthy argument under the following captions:

"1. The Colorado Anti-Discrimination Act May Not Constitutionally be Applied to Flight Crew Personnel of an Interstate Air Carrier.

"A. Application of the Colorado Anti-Discrimination Act to the Facts of This Case is Unconstitutional as a Burden on Commerce.

"B. Acts of Congress have Pre-empted the Subject Matter of this Litigation, Thereby Precluding Action by the States."

[fol. 644] Although additional arguments on other matters are contained in the briefs, they were not determined in the trial court. The only question resolved was that of jurisdiction. The trial court determined that the act was inapplicable to employees of those engaged in interstate commerce, and the judgment was based exclusively on that ground.

The first question to be resolved on this writ of error is whether the Colorado Anti-Discrimination Act may be applied to flight crew personnel of an interstate air carrier. If the question is answered in the negative other arguments directed to the merits of the action, and questions relating to the validity of the act when tested by provisions of the Colorado Constitution, are academic and of no materiality to the issue to be determined.

The trial court entered extensive Findings of Fact, Conclusions of Law and Judgment. As set forth in the appendix to the brief of Continental, this document consists of thirty-eight printed pages. It is very apparent that the learned trial judge gave careful consideration to the numerous decisions of the Supreme Court of the United States which bear upon the issue. Many of them are analysed in the judgment entered by the court. The findings, conclusions and judgment of the trial court might well be adopted in toto as the opinion of this court. However in the interest of brevity we will do no more than mention a few decisions which we think control the result.

[fol. 645] From the numerous opinions written by the United States Supreme Court dealing with the legality of state regulation of those engaged in interstate commerce, two basic propositions have been firmly established, to-wit:

(1) In those areas of interstate commerce which by their nature require uniformity of regulation by a single author-

ity, the states are without power to act even though Congress has not legislated on the subject; and

(2) In areas of interstate commerce which do not require such uniformity of regulation and in which the states may act because the matters are in some substantial degree of local concern; once the Congress does legislate upon the subject, it pre-empt the field and the states are thereafter without power to act.

An attempt by the state to apply a statute imposing burdens or restrictions upon persons engaged in either of the foregoing areas of interstate commerce will be set aside and held for naught as contravening the plenary power of the Congress to regulate interstate commerce. *Cooley v. Port Wardens of Philadelphia*, 12 How. 299, 13 L.Ed. 996; *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 65 S.Ct. 1515; *Minnesota Rate Cases*, 230 U.S. 352, 33 S.Ct. 729. This power in Congress is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than as are prescribed in the Constitution." *Gibbons v. Ogden*, 9 Wheat 1, 6 L.Ed. 23.

[fol. 646] Racial discrimination by an interstate carrier is a subject which must be free from diverse regulation by the several states and governed uniformly, if at all, by the Congress of the United States. Whatever our private notions may be on the subject, the opinions of the U.S. Supreme Court have established the rule.

In *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547 (1877), the court had before it a Louisiana statute which prohibited discrimination in passenger accommodations within the state. The defendant, owner of a passenger steamship which traveled the Mississippi River between Louisiana and Mississippi, had refused certain accommodations to a Negro and was sued by her. The court concluded that the statute as applied to those engaged in the transportation of passengers among the states was unconstitutional. The court said, *inter alia*:

"But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of

Congress. The statute now under consideration, in our opinion, occupies that position."

In *Morgan v. Virginia*, 328 U.S. 373, 66 S.Ct. 1050, a statute of the State of Virginia required segregation of white and colored passengers for both intrastate and interstate motor vehicle carriers. An interstate passenger who was a Negro challenged the validity of the statute as placing a burden on interstate commerce. The court held that the statute as applied to interstate carriers was unconstitutional. *Hall v. DeCuir*, *supra*, was approved in the [fol. 647] following language:

"The factual situation set out in preceding paragraphs emphasizes the soundness of this court's early conclusion in *Hall v. DeCuir*."

Counsel seeking reversal of the judgment of the trial court attempt in various ways to discredit the opinion of *Hall v. DeCuir*. It is asserted in the brief filed by the United States as amicus curiae that *Hall v. DeCuir* was "handed down seventy-six years prior to *Brown v. Board of Education*, 247 U.S. 483"; that the case has "long been eroded and devitalized" and that it "has no vitality today." The Supreme Court of the United States has not so indicated. *Brown v. Board of Education*, *supra*, did not involve interstate commerce. As recently as 1960 *Hall v. DeCuir* was cited with approval in *Huron Portland Cement Company v. City of Detroit*, 362 U.S. 440, in which the United States Supreme Court said: "But a state may not impose a burden which materially affects interstate commerce in an area where uniformity of regulation is necessary. *Hall v. DeCuir*, 95 U.S. 485."

Our attention is invited to the fact that the United States does not consider *Hall v. DeCuir*, to be "devitalized" in those matters in which application of the doctrine for which it is authority will promote a result sought by the government. On September 2, 1960, the United States appearing by counsel, who are on the brief in the instant case, filed a brief as amici curiae with the Supreme Court [fol. 648] of the United States in *Boynton v. Virginia*, 364 U.S. 454, in which we find the following:

"Thus, even in the absence of congressional action, the Commerce Clause, of its own force, requires invalidation of unreasonable state-imposed burdens on interstate commerce. See *Morgan v. Virginia*, 328, 373; *Hall v. DeCuir*, 95 U.S. 485. * * *

Thus it will be seen that counsel for the United States, appearing here as amicus curiae, attempts like the Roman god Janus to face both ways.

The State of Colorado either does or does not have power to legislate concerning racial discrimination by employers engaged in interstate commerce. The authority of the state does not come into existence in the event the exercise thereof will produce a result which may tend to promote a particular cause and then disappear or become impotent when the exercise thereof may lead to a different result. Jurisdiction to function does not depend upon what results will flow from the exercise of regulatory power.

The Supreme Court of the United States has clearly indicated that with reference to interstate carriers the regulation of racial discrimination is a matter in which there is a "need for national uniformity," and that the states are without jurisdiction to act in that area. *Morgan v. Virginia*, *supra*.

The judgment is affirmed.

Mr. Justice Frantz, Mr. Justice McWilliams and Mr. Justice Pringle dissent.

[fol. 649] MR. JUSTICE FRANTZ dissenting:

The overriding and cardinal purpose of this case is to ascertain the relation between federal and state authority based upon the fundamentals of the commerce clause (U.S. Const. Art. 1, § 8, cl. 3) and the equal protection mandate to the states contained in the 14th Amendment to the Federal Constitution. Is there an area of accommodation between nation and state in which the state may act affirmatively to see that no one is denied employment by reason of his "race, creed, color, national origin or ancestry," notwithstanding the employment will require travel over state lines?

The majority opinion believes that a valid reconciliation is not possible, and that the Colorado Anti-Discrimination Act of 1957 is ineffectual as to employment contracts of Continental Air Lines, Inc., an interstate commercial carrier by air. Since I do not share this belief, I voice a view at variance with the majority.

At least five reasons come to my mind which provoke dissent. There may be other cogent and perhaps more convincing reasons for opposing the majority opinion, but those which move me to disagree are, in my opinion, principles established in law and reason. Their application brings into proper perspective the interrelation of the two federal constitutional provisions already adverted to, and establishes the propriety of the Colorado act as it affects Continental's operations. *United States v. Underwriters Ass'n*, 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440.

[fol. 650] Before launching into a discussion of these reasons it would be well to keep in mind that the Colorado Anti-Discrimination Commission had made findings adverse to Continental, and that these findings are based upon evidence. And the Commission made the critical finding that the only reason that Green "was not selected for training school [was] because of his race." It is suggested that a better understanding of this controversy will be realized by reading the opinions in *Commission v. Continental Air Lines, Inc.*, 143 Colo. 590, 355 P. (2d) 83, to which the present matter is a sequel.

I would now enumerate my reasons for holding the Colorado act to be in harmony with the commerce clause.

1. A contract of employment is not commerce; it is not an intangible that enters into the stream of commerce just because the employee travels from state to state.
2. Conditions of employment, statutorily imposed, forbidding hiring on the basis of race, creed, color, national origin or ancestry are federally recognized as being properly within the sphere of state police power and in this connection inoffensive to the commerce clause.
3. It is a traditional concept of the federal government that an employment contract is ordinarily controlled by the law of the state where made, and reasonable regulations of the state regarding such contracts will be honored by the nation.

4. State laws prohibiting discrimination on the basis of race, creed, color, national origin or ancestry are in aid of commerce and not a burden on it, and hence sanctioned by [fol. 651] the federal government. 5. By enacting laws banning such discrimination the state merely implements and fulfills the interdictions of the 14th Amendment to the national Constitution, and exercises the power delegated thereunder to preserve the rights of citizens, required by the Federal Constitution, to be protected by the states.

1. A contract of employment of a pilot of an interstate carrier by air is not interstate commerce. Such contract per se does not move in commerce, although the employment thereunder requires operation of airplanes through several states. If Green had been hired, at once the employment relationship would have been established: Continental as employer and Green as employee would have become a fait accompli. Nothing could be a more localized activity; the creation of the contract arose within the state; its existence resulted from an activity wholly within the state.

True, that which Green would have done as a result of the established relationship would have been interstate commerce. Affording due regard to the distinction between the local matter of employment, and the activities of the employee thereafter as commerce, is not a strained and tenuous process. Federal courts have recognized that the mere fact that a domestic transaction generates a movement in interstate commerce is not sufficient to declare the transaction interstate commerce. *Jewel Tea Co. v. Williams* (10th Cir.) 118 F. (2d) 202.

Indeed, the federal courts sound warnings against encroachment on state competence. "If the power to regulate [fol. 652] interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many contracts purely domestic in their nature." *Hooper v. California*, 155 U.S. 648, 15 S.Ct. 207, 39 L.Ed. 297.

"Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not

be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893, 108 A.L.R. 1352.

Although the present problem is one without past precedent, we are not without straws in the wind. The Supreme Court of the United States asked itself "whether a state law taxing occupations is invalid so far as applicable to the pursuit of the business of *hiring persons to labor outside the state limits*, because in conflict with the Federal Constitution," (Emphasis supplied.) *Williams v. Fears*, 179 U.S. 186, 21 S.Ct. 128, 45 L.Ed. 186.

Its answer has relevance to our problem:

" * * * These labor contracts *were not in themselves sub-* [fol. 653] *jects of traffic between the states*, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could be correctly said that those who followed it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce." (Emphasis supplied.)

"[B]y the law of New York the creation of an agency is to be determined by the law of the place where the acts take place which are relied upon to create it." *Siegmán v. Meyer*, 100 F. (2d) 367. The question of agency "is to be determined by the law of New York, because the scope of an agent's authority depends upon the law of the place where the authority is conferred." Per Learned Hand in *Still v. Union Circulation*, 101 F. (2d) 11. The place where the contract of employment is made is controlling as to the law. *Moore v. Ill. Central R. Co.*, 136 F. (2d) 412; *Habbs v. Armour & Co.*, 270 F. (2d) 71; *Helper v. Corona Products*, 127 F. (2d) 612.

Contracts for advertising space in a national magazine, though involving publishing advertising and the mailing

and distribution of magazines outside the state, are "peculiarly local and distinct from . . . circulation whether or not that circulation be interstate commerce." *Western Live Stock v. Bureau of Internal Revenue*, 303 U.S. 250, 58 S.Ct. 546, 82 L.Ed. 823.

"That which in its consummation is not commerce does [fol. 654] not become commerce among the states because the transportation that we have mentioned takes place. To repeat the illustrations given by the court below, a firm of lawyers sending out a member to argue a case, or the Chautauqua lecture bureau sending out lecturers, does not engage in such commerce because the lawyer or lecturer goes to another state." *Federal Baseball Club v. National League*, 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898, 26 A.L.R. 357.

I would hold that the contract of hiring, as it established an employment relationship, would have been consummated in the State of Colorado and subject to the domestic laws of the state. The fact that Continental engaged itself to carry passengers by air through several states, and that Green would have been a part of the air flight personnel, would have been an incident of the contract of employment. Continental's engagement to carry passengers would have been interstate commerce. Green's contract would not have been an undertaking to carry A, B and C as passengers outside the state; his engagement would have been to work at a certain position for Continental.

2. A state enactment, having as its objective the prevention of contractual discrimination in employment emanating from prejudice or preference concerning race, religion, color, national origin or ancestry, is sanctioned as the proper exercise of the police power of the state, even though its effect in particular cases may result in an impact on interstate commerce. Where the law thus bears upon such commerce, the federal courts generally find no [fol. 655] invalidating encroachment on the national domain in commerce.

That statutory laws prohibiting discrimination on the basis of color, race, creed, national origin or ancestry in connection with certain relationships find validity in the

police power cannot be controverted. "The execution of this power and the enactment of laws pursuant to it are necessary to the well-being of the people of all civilized communities." *Bolden v. Grand Rapids Operating Corp.*, 239 Mich. 318, 14 N.W. 241, 53 A.L.R. 183. See "Employment Discrimination," 5 Race Relations Reporter 569 (1960).

Legislation directed against racial or religious discrimination is action "within the bounds of the police power." *New York State Commission v. Pelham Hall Apts.*, 170 N.Y.S. (2d) 750. It is declarative of the state's public policy against discrimination, *Application of Association for the Preservation of Freedom*, 188 N.Y.S. (2d) 885; and its purpose is the promotion "of the public good," *City of Chicago v. Corney*, 13 Ill. App. (2d) 396, 142 N.E. (2d) 160.

Legislative measures aimed against "discriminations in the areas of employment predicated upon prejudices and preferences arising out of race, religion, color or national origin" establish a public policy for the state concerning the relationship of employer and employee. *U.S. National Bank v. Snodgrass*, 202 Ore. 530, 275 P. (2d) 860, 50 A.L.R. (2d) 725.

Recognition of such legislation as the exercise of the state's police power has been accorded by the Supreme Court of the United States. "And certainly so far as the [fol. 656] Federal Constitution is concerned there is no doubt that legislation which prohibits discrimination on the basis of race in the use of facilities serving a public function is within the police power of the states." *Distict of Columbia v. Thompson Co.*, 346 U.S. 100, 73 S.Ct. 1007, 97 L.Ed. 1480. See *Railway Mail Ass'n v. Corsi*, 326 U.S. 88, 65 S.Ct. 1483, 89 L.Ed. 2072; *Bob-lo Excursion Co. v. Michigan*, 333 U.S. 28, 68 S.Ct. 358, 92 L.Ed. 455.

Conditions of employment between one operating in interstate commerce and an employee, fixed by the state under its police power, have been the subject of attack in the federal courts. Thus, in *Smith v. Alabama*, 124 U.S. 465, 8 S.Ct. 564, 31 L.Ed. 508, a statute of Alabama was claimed to be in violation of the Federal Constitution. The statute made it a misdemeanor for an engineer to operate, in the state, a train of cars used for the transportation of persons

or freight without first undergoing an examination and obtaining a license from a board appointed by the Governor. The examination involved the character and habits of the applicant. Provision was made for denial or revocation of a license upon certain contingencies appearing.

Smith v. Alabama concerned an engineer whose ordinary run was over the Mobile and Ohio Railroad Company's road between Mobile, Alabama and Corinth, Mississippi. He never handled the engine between points wholly within Alabama. He also operated an engine pulling a passenger train between St. Louis and Mobile. It was contended that the statute contravened the commerce clause of the Federal [fol. 657] Constitution.

In disposing of the contention the Supreme Court said:

"In conclusion, we find, therefore, first, that the statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of interstate commerce, even when applied as in the case under consideration; secondly, that it is properly an act of legislation within the scope of the admitted power reserved to the State to regulate the relative rights and duties of persons being and acting within its territorial jurisdiction, intended to operate so as to secure for the public, safety of person and property; and, thirdly, that, so far as it affects transactions of commerce among the States, it does so only indirectly, incidentally, and remotely, and not so as to burden or impede them, and, in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence."

A statute of Alabama provided for the protection of the travelling public against accidents resulting from color-blindness and defective vision of railroad employees, and to that end required an examination before a state board of any person seeking a position that involved the running [fol. 658] or management of a railroad train. Its validity was questioned on the theory that it interfered with inter-

state commerce in the case of *Nashville, C. & St. L. Ry. v. Alabama*, 128 U.S. 96, 9 S.Ct. 28, 32 L.Ed. 352.

The railway company operated its lines through several states and had as a train conductor one who had not secured a certificate of his fitness in compliance with the Alabama statute. After reaffirming the doctrine enunciated in *Smith v. Alabama, supra*, the Supreme Court stated that "[s]uch legislation is not directed against commerce; and only affects it incidentally, and therefore cannot be called, within the meaning of the Constitution, a regulation of commerce."

A state statute prescribing a not unreasonable number for the crews of freight trains "is not in any proper sense a regulation of interstate commerce nor does it deny the equal protection of the laws. Upon its face, it must be taken as not directed against interstate commerce, but as having been enacted in aid, not in obstruction, of such commerce and for the protection of those engaged in such commerce." (Emphasis supplied.) *Chicago, R.I. & Pac. Ry. Co. v. Arkansas*, 219 U.S. 453, 31 S.Ct. 275, 55 L.Ed. 290. See *Missouri Pacific R. Co. v. Norwood*, 283 U.S. 249, 51 S.Ct. 458, 75 L.Ed. 1010.

A state may prescribe regulations for the payment of wages of employees of railway carriers, and so far as such law "affects interstate commerce, it does so indirectly." *Erie R. Co. v. Williams*, 233 U.S. 685, 34 S.Ct. 761, 58 L.Ed. [fol. 659] 1155, 51 L.R.A.N.S. 1097. A California statute required every "transportation agent" to obtain a license assuring his fitness and to file a bond securing faithful performance of the transportation contracts which he negotiated. Its apparent purpose was to protect the public from fraud and overreaching. In *California v. Thompson*, 313 U.S. 109, 61 S.Ct. 930, 85 L.Ed. 1219, the court held the regulation not to be violative of the commerce clause, saying:

"As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised

its power, even though the regulation affects interstate commerce. Ever since *Willson v. Black Bird Creek Marsh Co.*, 2 Pet. 245, and *Cooley v. Board of Port Wardens*, 12 How. 299, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress."

These decisions evidence the solicitude of the Supreme Court for sustaining the police power of the states in matters relating to certain kinds of contracts, and in particular employment relationships, even though the exercise of such power affects interstate commerce. Citation of these authorities does not pretend to be exhaustive, but it represents a good sampling from which we can deduce validity of the act here under attack. See *Colorado Co. v. Colorado Springs*, 61 Colo. 560, 158 Pac. 816.

3. Employment contracts are ordinarily of local concern, and controlled by the laws of the state where made. That they have relation to commerce among the states does not necessarily make them vulnerable to attack as being made pursuant to state laws which affect commerce. Legislation regarding contracts, aimed at regulation of rights, duties and liabilities of the contracting parties, is properly within the sphere of state activity, and even though it affects commerce, such impact is deemed indirect and hence valid. Should the federal government clearly preempt the area in which the state has acted, then exclusion of state action takes place.

Early in its history the Supreme Court of the United States stated that generally "the legislation of a State, *not directed against commerce* or any of its regulations, but relating to the *rights, duties, and liabilities of citizens*, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit." (Emphasis supplied.) *Sherlock v. Alling, Adm.*, 93 U.S. 99, 23 L.Ed. 19.

The doctrine of *Sherlock v. Alling* has been applied in later cases decided by the federal appellate courts. A resort [fol. 661] to Shepard's United States Citations reveals its durability. And the doctrine has been applied to statutes of a state which impose conditions in order to effectuate an employment relationship. *Smith v. Alabama*, *supra*; *Nashville, C. & St. L. Ry. v. Alabama*, *supra*; *Chicago, R.I. & Pac. Ry. v. Arkansas*, *supra*. See *Richmond & Allegheny R.R. v. Tobacco Co.*, 169 U.S. 311, 18 S.Ct. 335, 42 L.Ed. 759; *Chicago, M. & St.P. Ry. v. Solan*, 169 U.S. 133, 18 S.Ct. 289, 42 L.Ed. 688. Last approved in *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 80 S.Ct. 813, 4 L.Ed. (2d) 852.

In *Smith v. Alabama*, *supra*, the court was dealing with state required examination and licensing of locomotive engineers. In holding the state legislation valid and inoffensive to the commerce clause, the court expressly made applicable the above language quoted from *Sherlock v. Alling*, *supra*. The sanction of the opinion extended to "regulating the *relative rights and duties* of persons within the jurisdiction of the State, and *operating on them*, even when engaged in the business of interstate commerce." (Emphasis supplied.)

Rights and duties settled by contract afford grounds for state intervention where the state can with propriety establish a public policy regarding them. Particularly is this true in relation to employment contracts—indeed, this has been a fertile field in recent years for the ordination of policy measures. Here personal relations are fundamental, and the greater the skill required of the employee, the greater is the personal element involved.

[fol. 662] A contract is a juridically recognized engagement between persons by which their rights and duties concerning a subject matter are established. *Dartmouth College v. Woodward*, 17 U.S. 518, 4 Wheat. 518, 4 L.Ed. 629. Ordinarily, juridical recognition is a matter of domestic concern. And, as already noted, the policy of the state may be exerted to require certain conditions in making the engagement before it shall have a binding effect upon the parties.

Rights and duties imposed by the parties upon themselves by agreement are pivotal concepts; to the Supreme Court they have significance in determining whether a matter presented to it indicates an intrusion on commerce. If legislation of the state is patently and essentially concerned with the rights and duties of persons, inter se, and said legislation in particular cases has an incidental or adventitious impingement on commerce among the states, the Supreme Court seems inclined to hold it related to a localized activity, and its influence on commerce not measurably significant.

All the elements necessary to the application of this doctrine are here present. Green is a qualified applicant for a position requiring special skills. A contract between Continental and Green would involve these skills, and hence the personal element creating a special, individual-to-individual relationship with rights and duties pervading it. The generality of the anti-discrimination law, evidently directed to employment generally, without intent to burden commerce, when brought into perspective with the immediate problem of hiring a person with special skills, leaves us with a law innoxious to interstate commerce.

4. The Colorado Anti-Discrimination Act is in aid of, and not a burden on, commerce. States may not deny persons within their jurisdictions the equal protection of the laws. U.S. Const., XIV Amend. May that which the states are prohibited from doing become the subject of harmonious, positive legislation by the states? May the states provide for equal treatment of persons within their jurisdictions by legislation? If they may, does the fact that commerce may be incidentally affected, invalidate such legislation?

"The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from *unfriendly legislation* against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race." (Emphasis supplied.) *Strauder v. West Virginia*, 100 U.S. 303, 25 L.Ed.

664. It would appear that *friendly legislation* is implicitly invited.

State laws having local aspects "are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be [fol. 664] regarded as *legislation in aid of commerce*, and as a rightful exercise of the police power of the State to *regulate the relative rights and duties of all persons and corporations within its limits*." (Emphasis supplied.) *Pennsylvania R.R. Co. v. Hughes*, 191 U.S. 477, 24 S.Ct. 132, 46 L.Ed. 268. *Richmond & Allegheny R.R. v. Tobacco Co.*, *supra*; *Chicago, M. & St.P. Ry. v. Solan*, *supra*; *Mobile County v. Kimball*, 102 U.S. 691, 26 L.Ed. 238.

So long as the federal government has not made clear its intent to act exclusively in the regulation of an area of commerce, the nation and the state may march hand in hand concerning it in advancing parallel policies against discrimination based on race, creed or color, *Bob-lo Excursion Co. v. Michigan*, *supra*. In a footnote of the opinion the court says, "The direction of national policy is clearly in accord with Michigan policy."

5. Colorado has activated the prohibitions of the Federal 14th Amendment by enacting a law forbidding discrimination in employment based on race, creed, color, national origin or ancestry. Under the 14th Amendment a person has a *federal right* not to be discriminated against by the state on the basis of race, color, creed or national origin; under the Colorado statute the state creates a similar right running against such discrimination by anyone, including a private party. What was a federal right thus becomes a broadened state right by virtue of the statute. See Abernathy, *Expansion of the State Action Concept Under the Fourteenth Amendment*, 43 Cornell L. Quar. 375.

[fol. 665] The 14th Amendment is directed against discriminatory state action; the Colorado Anti-Discrimination Act is state action, but consistent with, although having a broader base than, the 14th Amendment. See *Bob-lo Excursion Co. v. Michigan*, *supra*. *Ferguson v. Gies*, 82 Mich. 358, 46 N.W. 718, 21 Am.S.R. 576, 9 L.R.A. 589, indicates

that state laws putting "the colored citizen upon an equal footing in all respects with the white citizen" is nothing more than the declaration by the states of what the Federal Constitution ordains.

Contention was made in *Railway Mail Ass'n v. Corsi, supra*, that the New York Civil Rights Law offended the due process clause of the 14th Amendment. It seems to me that the answer of the Supreme Court is a manifestation of a view which would hold the Colorado act valid, as making effectual by state action in an affirmative way the 14th Amendment. The court said:

" * * * We have here a prohibition of discrimination in membership or union services on account of race, creed or color. A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color. We see no constitutional basis for the contention that a state cannot protect workers from exclusion solely on the basis of race, color or creed by an organization, functioning under the protection [fol. 666] of the state, which holds itself out to represent the general business needs of employees."

Since it is seriously doubted whether the federal government has assumed exclusive control of the employment in question, we should heed these words in the decision of *Railway Mail Ass'n v. Corsi, supra*:

"This provision can hardly be deemed to indicate an intent on the part of Congress to enter and completely absorb the field of regulation of organizations of federal employees. *Congress must clearly manifest an intention to regulate for itself activities of its employees, which are apart from their governmental duties, before the police power of the state is powerless.*" (Emphasis supplied.)

No such clear manifestation appears in this case.

° In the course of this opinion I have accepted as fact that the Anti-Discrimination Act will on occasion exert

an influence on commerce among the states. The act was designed to accomplish a purpose wholly within the letter and spirit of the 14th Amendment, and contains no exception as to employment involving duties requiring movement between states. In this respect interstate commerce will be affected, but not detrimentally. How can it be contended that state action which is obedient to the 14th Amendment does anything other than aid commerce?

Had the federal government clearly acted against discrimination in manner showing that preemption had taken place, the state would have no authority to act. But, as Justice Doyle demonstrated in his specially concurring opinion in *Colorado Anti-Discrimination Commission v. Continental Air Lines, Inc.*, *supra*, no federal preemption has been effected.

Mr. Justice McWilliams authorizes me to say that he concurs in this dissent.

[fol. 668] MR. JUSTICE PRINGLE dissenting:

The majority does not hold that the Anti-Discrimination Act itself is unconstitutional but only that it cannot apply to employers engaged in interstate commerce, and relies heavily on *Hall v. DeCuir*, 95 U.S. 485, 24 L.Ed. 547 (1877), to support its position. I agree that if *Hall v. DeCuir*, *supra*, is to be placed in limbo it can be done only by the hand which promulgated it—the Supreme Court of the United States.

However, I cannot believe that a law passed by a state which implements a basic concept of our form of government—the right of a man, otherwise well qualified, not to be denied a job solely because of his race, color or creed—can be deemed to be a *burden* on interstate commerce.

Moreover, I would point out that, in my opinion, the Colorado Anti-Discrimination statute cannot affect the uniformity of regulation in interstate commerce, for if any state passed a law permitting or requiring the discrimination complained of here, it would certainly be struck down as a violation of the Fourteenth Amendment to the Constitution of the United States. *Brown v. Board of Education*, 347 U.S. 483.

[fol. 669]

IN THE SUPREME COURT OF THE STATE OF COLORADO

19771

THE COLORADO ANTI-DISCRIMINATION COMMISSION and EDWARD MILLER, MRS. PAUL BUDIN, CLARENCE C. BELLINGER, GENE MANZANARES, ROBERT C. KEELER, GEORGE J. WHITE, and GEORGE O. CORY, as members of said Commission and MARLON D. GREEN, Plaintiffs in Error,

vs.

CONTINENTAL AIR LINES, INC., Defendant in Error.

JUDGMENT—February 13, 1962

This cause having been brought to this court by writ of error to review the judgment of the District Court of the City and County of Denver, and having been heretofore argued by counsel and submitted to the consideration and judgment of the court upon the matters assigned as constituting error in the proceedings and judgment of said District Court, and it now appearing to the court that there is no error in the proceedings and judgment of said District Court.

It is therefore ordered and adjudged that the judgment of said District Court be, and the same is hereby, affirmed, and that it stand in full force and effect; and that this cause be remanded to said District Court for such other and further proceedings, according to law, as shall be necessary to the final execution of the judgment of said District Court in the cause, notwithstanding the said writ of error.

By the Court. En Banc. February 13, 1962.

[fol. 670]

[File endorsement omitted]

[fol. 671]

IN THE SUPREME COURT OF THE STATE OF COLORADO
Civil Action No: 19771

[Title omitted]

PETITION FOR REHEARING—Filed February 21, 1962

The Plaintiff in Error, the Colorado Anti-Discrimination Commission petitions the Court for rehearing and for a clarification of the grounds on which the majority opinion is based. In support thereof it asserts that the Honorable majority of the Justices in rendering their decision misapprehended the following point:

The opinion at Page 5, construed the language of the Colorado Anti-Discrimination Act, 80-24-2 (5) C.R.S. '53 Supp. This language negatives the idea that there was any attempt on the part of the Legislature to legislate upon a matter involving interstate commerce. If this be the reason for affirming the lower Court's judgment, the remaining 8 pages of the majority opinion are only dictum and the dissenting opinions were differing on a constitutional issue when the majority had construed the statute so as not to bring it in conflict with the Federal Constitution or an Act of Congress, *A.F. of L. v. Reilly*, 113 Colo. '90, 155 Pac. 2d 145 and *Lipsett v. Davis*, 119 Colo. 335, 203 Pac. 2d 730.

[fol. 672] The uncertainty in the majority opinion raises the question whether the decision affirming is based on the construction of the State Statute, or the constitutional doctrine of Federal pre-emption. If the majority affirmed because the Legislature did not attempt "to legislate upon a matter involving inter-state commerce" there is no Federal question for consideration by the United States Supreme Court, 28 U.S. Code 1652,

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply."

"It should be emphasized that in respect to the construction of state statutes, the state Court's views are completely nonreviewable by the Supreme Court. If the sole basis of the decision is one of construction, the case cannot be the subject of either appeal or certiorari." Supreme Court practice-revised rules, Second Edition Stern and Gressman, Page 58.

The Colorado Anti-Discrimination Act is patterned after the New York Law, Page 71 of Green's Brief in Case No. 19215. In adopting the laws of another jurisdiction the general rule is that the Legislature adopts also the construction given these laws by the Courts of that jurisdiction and our Legislature is presumed to have done so in these instances, *Stebbins v. Anthony*, 5 Colo. 348, page 356. Hiring, which takes place within the state is covered, even if the employees work will be outside the state, thus in New York, S.C.A.D. took jurisdiction over an Ohio company which hired within the state of New York for employment in Caracas, Venezuela. The New York commission has also taken jurisdiction over an airline which did its formal hiring out of the state, because it drew all of its applicants from a school in New York, *Banks v. Capital Airlines*, 5 [fol. 673] Race Rel. L. Rep. 263. *Right To Equal Treatment—Administrative Enforcement Of Anti-Discrimination Legislation*, 74 Harvard L. Rev. 526, Page 566.

Continental in its Brief, Pages 6 through 21, impliedly conceded that the Colorado Anti-Discrimination Act was, by the Legislature, intended to apply to interstate air carriers.

Respectfully submitted,

Duke W. Dunbar, Attorney General, State Capitol,
Denver 2, Colorado; Frank E. Hickey, Deputy Attorney General, State Capitol, Denver 2, Colorado;
Charles S. Thomas, Special Assistant Attorney General, Attorneys for the Anti-Discrimination Commission, 1430 First National Bank Building,
Denver 2, Colorado, AM 6-0867.

[fol. 675]

[File endorsement omitted]

[fol. 676]

IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 19771

[Title omitted]

PETITION FOR REHEARING OF MARLON D. GREEN, PLAINTIFF IN
ERROR—Filed February 28, 1962

Marlon D. Green, one of the plaintiffs in error, petitions for rehearing of the *en banc* four to three decision entered February 13, 1962. References to the record of proceedings before the Commission and to the record before the Court will be by the same designations as in the Briefs. The points claimed to be overlooked or misapprehended by the Court are as follows:

Facts Overlooked:

The Court has overlooked an important point of Marlon D. Green's position. On Page 7 of this opinion the majority of the Court says: "Counsel for Green in substance make the same argument on the question of whether the State of Colorado had jurisdiction to regulate the hiring practices of those engaged in interstate air transportation." The Court has overlooked the fact that the Congress of the United States by the 1875 Enabling Act for the State of Colorado gave Colorado jurisdiction over racial discrimination. Marlon D. Green's Brief in Case No. 19215, Page 35 through 42 and Pages 47 to 57.

The Answer of Marlon D. Green filed in the District Court made it clear that the Congress of the United States gave jurisdiction to the State of Colorado over racial discrimination (Folios 68 to 72).

T. Raber Taylor, Attorney for Plaintiff in Error,
Marlon D. Green, Suite 625, 818—17th Street,
Denver 2, Colorado, AL 5-2051.

[fol. 678]

IN THE SUPREME COURT OF THE STATE OF COLORADO

[Title omitted]

ORDER DENYING PETITIONS FOR REHEARING—March 5, 1962

The court having considered the petitions of plaintiffs in error for rehearing in said cause, and now being sufficiently advised in the premises, it is this day ordered that said petitions be, and the same hereby are, denied.

By the Court. En Banc/ March 5, 1962.

[fol. 680] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 681]

SUPREME COURT OF THE UNITED STATES

No. 146, October Term, 1962

THE COLORADO ANTI-DISCRIMINATION COMMISSION et al.,
Petitioners,

vs.

CONTINENTAL AIR LINES, INC.

ORDER ALLOWING CERTIORARI—October 8, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of Colorado is granted. The case is consolidated with No. 492 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.

[fol. 682]

SUPREME COURT OF THE UNITED STATES

No. 68 Misc., October Term, 1962

MARLON D. GREEN, Petitioner,

vs.

CONTINENTAL AIR LINES, INC.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND GRANTING PETITION FOR WRIT OF
CERTIORARI—October 8, 1962

On Petition for Writ of Certiorari to the Supreme Court of the State of Colorado.

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 492. The case is consolidated with No. 146 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

October 8, 1962.

Mr. Justice Goldberg took no part in the consideration or decision of this motion and petition.

[fol. 683]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 492

Consolidated with No. 146

MARLON D. GREEN, Petitioner,

against

CONTINENTAL AIR LINES, Inc., Respondent.

STIPULATION TO USE RECORD IN NO. 146 AS RECORD IN NO. 492
—Filed October 26, 1962.

On October 8, 1962, the Supreme Court of the United States granted certiorari in *Green v. Continental Air Lines, Inc.*, formerly No. 68 Misc., and now Case No. 492, and consolidated that case with *Colorado Anti-Discrimination Commission, et al. v. Continental Air Lines, Inc.*, Case No. 146.

It is stipulated and agreed by and between counsel for Petitioner, Marlon D. Green, and counsel for Respondent, Continental Air Lines, Inc. that the printed record as designated and cross-designated in keeping with Rule 17 in the case of *Colorado Anti-Discrimination Commission, et al. v. Continental Air Lines, Inc.*, No. 146, shall also be the record in case No. 492, and that the Clerk of the Supreme Court of the United States may, at public expense, order the appropriate number of additional copies of that [fol. 684] printed record for the use of Petitioner, Marlon D. Green, in connection with Case No. 492.

Dated at Denver, Colorado this 19th day of October, 1962.

T. Raber Taylor, Attorney for Petitioner, Marlon D. Green, 625 American National Bank Bldg., Denver 2, Colorado, ALpine 5-2051.

Patrick M. Westfeldt, William C. McClearn, Warren L. Tomlinson, John Carroll Richardson, Attorneys for Respondent, Continental Air Lines, Inc., 500 Equitable Building, Denver 2, Colorado, AMherst 6-1461.